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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~770.~~ ~~491~~ 206. - 7+8

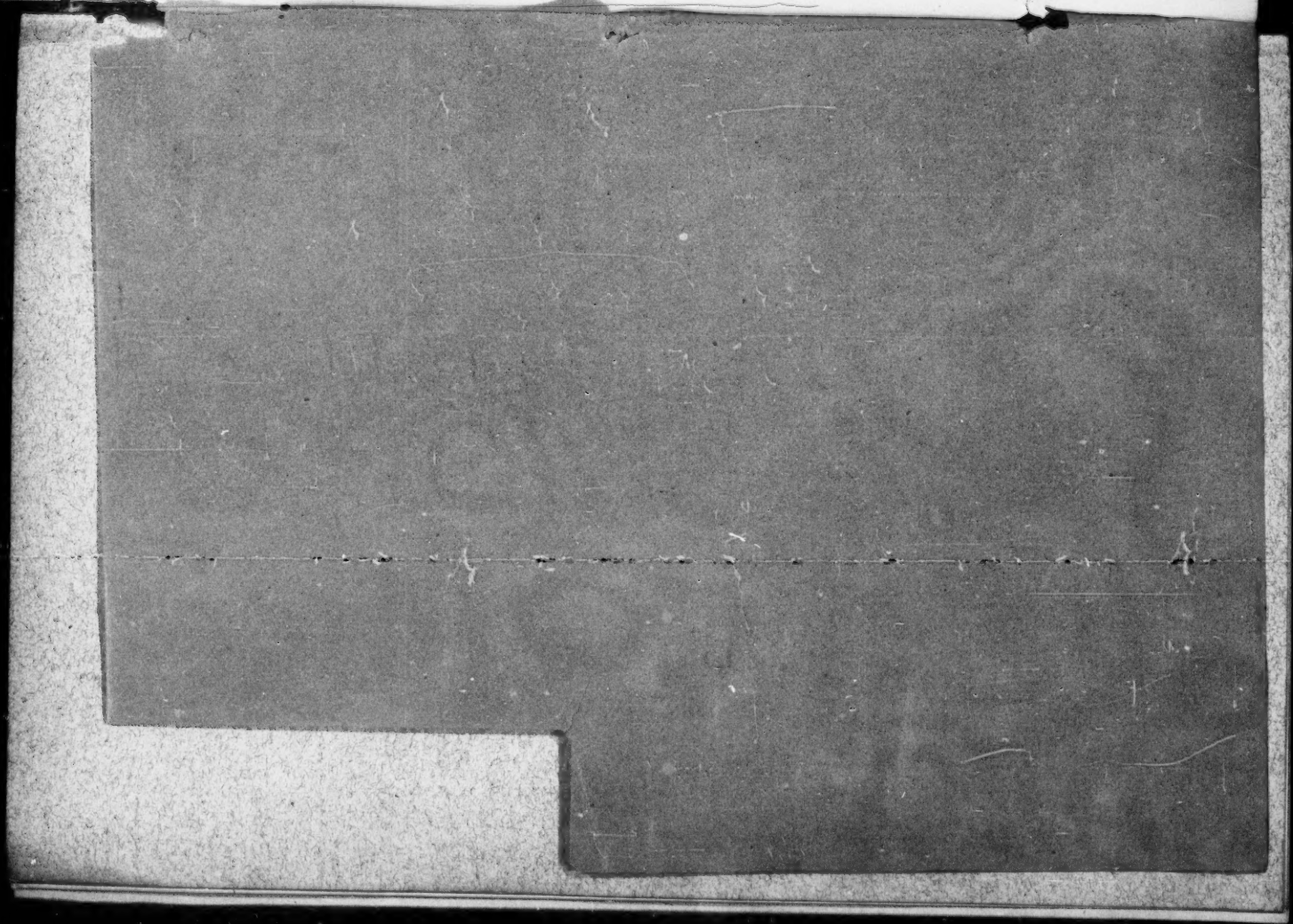
THE MISSIONARY SOCIETY OF THE METHODIST EPISCOPAL CHURCH, APPELLANT,

vs.

DALLES CITY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

FILED APRIL 6, 1880.



SUPREME COURT OF THE UNITED STATES.

No. 770.

THE MISSIONARY SOCIETY OF THE METHODIST EPISCOPAL CHURCH, APPELLANT,

vs.

DALLES CITY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

INDEX.

	Original.	Print.
Transcript from State court: Complaint	1	1
Summons	13	5
Affidavit for publication	15	5
Certificate of publication	18	6
Demurrer to complaint	21	7
Petition to remove cause	22	8
Bond	26	9
Order transferring cause to United States circuit court	30	10
Order that defendant amend demurrer	33	11
Demurrer to complaint	34	11
Order of hearing on demurrer	35	12
Order overruling demurrer	36	12
Bill in equity	37	13
Motion to strike out parts of bill	50	17
Order denying motion to strike out parts of bill	52	17
Exceptions to bill	53	18
Order of hearing on exceptions	55	18
Order disallowing exceptions	56	18
Answer of defendant	57	19
Exceptions to defendant's answer	82	27
Order setting time for hearing exceptions to answer	83	28
Order of continuance	84	28
Order of hearing on exceptions to answer	85	28
Order disallowing exceptions	86	29
Replication	87	29
Stipulation as to evidence	89	30
Stipulation that copies of papers be read in evidence	91	31
Order setting cause for trial	93	31
Order of hearing	94	32

	Original.	Print.
Decree	95	32
Judge Deady's decision	96	33
COMPLAINANTS' TESTIMONY.		
Application to purchase of trustees of Dalles City	102	44
Receipt of receiver	103	45
Patent	104	45
Application of Dalles City to perpetuate testimony	115	49
Testimony of William Helm	127	53
Testimony of Nathan Olney	133	55
Deposition of R. R. Thompson	141	58
Deposition of Wm. C. Laughlin	148	61
Testimony of Perrin B. Whitman	153	63
Testimony of Elisha McDaniel	164	67
Deposition of Edward Crate	169	69
Deed from A. B. C. F. M. to McCarver and White	175	72
Decision of surveyor-general of Oregon	181	74
DEFENDANT'S TESTIMONY.		
Letter of S. S. Burdett, Commissioner, to surveyor-general of Oregon	223	89
Decision of Hon. Secretary of Interior	225	89
Deed from A. B. C. F. M. to M. S. M. E. C	245	97
Letter from surveyor-general of Oregon to deputy surveyor	249	99
Notification of M. S. M. E. C. to surveyor-general of Oregon	252	99
Letter of H. A. G. Lee, superintendent of Indian affairs, to Messieurs Blanchett	255	101
Claim of Rev. Wm. Roberts, superintendent M. S. M. E. Church	259	102
Deposition of Alanson Hinman	261	103
Deposition of Alvan F. Waller	273	108
Testimony of William Roberts	286	113
Stipulation as to bond for costs on appeal	322	126
Bond for costs on appeal	323	127
Citation	325	127
Clerk's certificate	326	128
Stipulation of counsel	327	128

a In the Supreme Court of the United States.

THE MISSIONARY SOCIETY OF THE METHODIST Episcopal Church, appellant, *vs.* DALLES CITY. } No. 770.

Appeal from the circuit court of the United States for the district of Oregon.

[SEAL OF THE U. S. CIRCUIT COURT, OREGON.] TRANSCRIPT.

b In the circuit court of the United States for the district of Oregon.

Be it remember'd that on the 30th day of January, 1878, there was duly filed in the circuit court of the United States for the district of Oregon a transcript of record from the circuit court of the State of Oregon for the county of Wasco, in words and figures following, to-wit:

1 *Complainant.*

In the circuit court of the State of Oregon, for Wasco County.

DALLES CITY, PLAINTIFF, *vs.* THE MISSIONARY SOCIETY OF THE METHODIST Episcopal Church, defendant.

The above-named plaintiff, complaining of the above-named defendant, for cause of suit alleges:

That the plaintiff, Dalles City, is a municipal corporation under the laws of the State of Oregon, and is a resident of the county of Wasco, State of Oregon, and that the defendant is a duly organized corporation under the laws of the State of New York.

Plaintiff further alleges that it is as such corporation in the possession, and is occupying as a town site, the following described tract of land, situate in said county of Wasco, State of Oregon, and being the fractional northwest quarter of section three (3), in township one (1) north, of range thirteen east of Willamette meridian, and containing about
2 one hundred and twelve acres, more or less, according to the surveys of the United States.

That the said above described tract of land was settled upon and occupied as a place of business and trade, and not for agriculture, during the year A. D. 1852, and has been occupied as such ever since. That during the year A. D. 1855 the lawfully constituted authorities of Wasco County, Oregon, caused the same, to be legally surveyed and platted into lots, blocks, streets, and alleys, and caused the plat thereof to be duly recorded in said county of Wasco. That on or about the day of 1860, the plaintiff, by its officers, servants, and employees, duly applied to the proper land officers of the United States for the purchase of the said above described tract of land in trust for the several use and benefit of the occupants of the same, in pursuance of the act of Congress approved the 23d of May, 1844, and then and there did purchase the said above described tract of land, and did pay the pur-

chase price therefor, to wit, $1.25 per acre, and that the said tract of land has been ever since said last-named date occupied by the
3 plaintiff, and is *and is* now so occupied, as a town site, and that the plaintiff is now the owner of the said above described tract of land as aforesaid in trust for the several use and benefit of the occupants thereof, according to their respective interests.

Plaintiff further alleges that the said fractional N. W. ¼ of section three, in township one N., of R. 13 E. is within the boundaries of a certain tract of land, containing 287 acres, which the said defendant claims to own in fee simple, and for which a patent certificate was issued by the United States to the defendant on the 9th day of July, A. D. 1875, and which land so patented to the defendant is more particularly described as follows, to wit: beginning at the northeast corner of their said claim in sec. 3, T. 1 N., R. 13 E., and on the left bank of the Columbia River at a set post; thence south 63.27 chains to a set post in section three (3) for the southeast corner; thence west 80.00 chains to a set post in section four (4) for the S. W. corner; thence north 37 chains to a set post in section 33, township two (2) N., of R. 13 E., for
4 the N. W. corner; thence east 45.19 chains to set post on the left bank of the Columbia River, in section thirty-four (34); thence with the meanderings of the said river up stream south 47° E. 14.58 chains; thence south 38° east 4 chains; thence south 70° east 8.78 chains; thence south 76° 11′ east 9.20 chains to the place of beginning.

Plaintiff further avers that defendant claims to own the said above-described lots of ground, and which include the fractional N. W. ¼ of sec. 3, in town. 1 N., of R. 13 E., as aforesaid, and claims the same under and by virtue of the second provision in section one of the act of Congress, entitled an act to establish the territorial government of Oregon, approved the 14th day of August, A. D. 1848, which said proviso confirmed and established the title to the land, not exceeding six hundred and forty acres, then occupied as a missionary station among the Indian tribes in the Territory of Oregon, together with the improvements thereon, to the several religious societies to which said missionary stations respectively belonged. That the said defendant claims to have established a missionary station on the said tract of land
5 among the Indian tribes of that place in Eastern Oregon, that is, east of the Cascade range of mountains, and occupied the same as such missionary station on the said 14th day of August, 1848, and for some years prior to that time, and by virtue of such occupancy it was and is entitled to the said tract of land for which it received a patent on the 9th day of July, 1875, as aforesaid.

And plaintiff further says that about the year 1840 the said defendant established a missionary station on a portion of said tract claimed by it and occupied the same as a missionary station until about the month of September, 1847, and then abandoned and discontinued such occupancy, and never after that time occupied the said tract of land or any portion thereof as a missionary station or otherwise, the said fractional N. W. ¼ of sec. 3 in T. 1 N., of R. 13 E., or any part thereof.

Plaintiff further avers that such abandonment was made in pursuance of directions and orders duly issued by the defendant to its em-
6 ployees, agents, and missionaries in Oregon to discontinue missionary labors in the Territory of Oregon east of the Cascade mountains, and in pursuance of such directions and orders the same was so abandoned on or about the 10th day of September, 1847, and there was no missionary station on the said tract of land claimed by the defendant or any portion thereof after the said 10th day of Septem-

ber, 1847, and that there was no missionary labors performed upon any part of the said tract of land claimed by the defendant by it, defendant, or by any other missionary society after said date; yet the said defendant, notwithstanding the same was not occupied as such missionary station after the said month of September, 1847, and did not belong to it, afterwards, to wit, about the year 1854, caused the said tract of about 643 acres of land to be surveyed, and then made a claim of title to it under and by virtue of the provisions of the said act of Congress approved the 14th day of August, 1848.

That afterward, to wit, on the 30th day of March, 1854, the said
7 defendant (missionary society), by its agent, T. H. Bearn, filed a notification of its claim of title to the said tract of land with the surveyor-general of Oregon. That afterward the Commissioner of the General Land Office of the United States authorized and empowered the surveyor-general of Oregon to hear, settle, and determine the contest and controversy existing between the plaintiff, Dalles City, and the defendant, the Missionary Society of the M. E. Church, and in pursuance of such authority the said surveyor-general notified the parties, to wit, this plaintiff, Dalles City, and the said Missionary Society of the Methodist Episcopal Church, that on the 16th day of February, 1860, he would proceed to the hearing of the said controversy between the said defendant as claimant and others, and this plaintiff, Dalles City.

That from that day until some time in October of the same year (1860) testimony was taken before the said surveyor-general by the said missionary society to support the validity of its title to the said tract of land now and then occupied by this plaintiff, Dalles City, as aforesaid,
8 and by this plaintiff in support of its right to the same, and after hearing the proof on each side of the contestants, and after the allegations of the parties, the said surveyor general, on the 2d day of February, 1861, decided that the said defendant, the Missionary Society of the Methodist Episcopal Church, had no right or title whatever to the said tract of land nor to any part thereof.

That the said defendant the said Missionary Society appealed from the decision to the Commissioner of the General Land Office, who, after hearing the argument of counsel, the said Commissioner, in the month of February, 1863, affirmed the decisions of the surveyor-general of Oregon. That the said defendant (Missionary Society) again appealed from the decision of the General Land Office to the Secretary of the Interior. That after remaining undecided for many years, the Secretary of the Interior on the 15th day of March, 1875, decided that the said defendant, the Missionary Society of the Methodist Episcopal Church, was entitled to the land in controversy, to wit, about 287 acres and
9 including the said fractional N. W. ¼ of sec. 3, T. 1 N., of R. 13 east, as aforesaid, and on the 9th day of July, 1875, caused a patent to be issued therefor to the said Missionary Society of the Methodist Episcopal Church, the defendant herein.

And plaintiff further alleges that the decision of the Secretary of the Interior was wrongful, unjust, and illegal; that it was made under a misapprehension and mistake of both the law and the facts in regard to the rights of this plaintiff, Dalles City, and there was no evidence whatever showing or tending to prove that any portion of the said tract of land claimed by this plaintiff ever was occupied as a missionary station of the Methodist Episcopal Church or any other missionary society, and there was no evidence or proof showing or tending to prove that the defendant, the missionary society of the Methodist

Episcopal Church, or any of its agents, employees or missionaries occupied the said tract of land in dispute as a missionary station or otherwise after the tenth day of September, 1847, but on the contrary all the evidence before the said Secretary showed that
10 the said missionary station had been voluntarily abandoned by the defendant, the Missionary Society of the Methodist Episcopal Church in the month of September, 1847, and without any intention of ever again occupying the same as a missionary station by the said Missionary Society or any other missionary society. And plaintiff further alleges that the said patent so issued was issued to the said Missionary Society of the Methodist Episcopal Church in violation of law, and in violation of the rights of the plaintiff and the occupants of the said tract of land in dispute; and the plaintiff further avers that the said defendant, the said Missionary Society of the Methodist Episcopal Church, on the said 14th day of August, 1848, occupied a tract of land as a missionary station near *near* the town of Salem, in the State of Oregon, and claimed the title to the same under and by virtue of the provisions of the said act of Congress approved August 14, 1848, and received a patent from the United States for the said tract of land
11 containing 97.39 acres, situate in sections 23 and 26 in town. 7 south, of range 3 west, long before the said 9th day of July, 1875, when the patent was issued for the land in controversy in this suit.

Wherefore this plaintiff prays the hon. court to adjudge and decree that it, this plaintiff, is the owner of the said tract of land, to wit, the fractional N. W. ¼ of sec. 3, in town. one N., of range 13 east, Willamette meridian, containing 112 acres, and that the defendant holds the legal title to the same in trust for the plaintiff as aforesaid, and that the defendant aforesaid be decreed to make, execute, and deliver to the plaintiff a good and sufficient deed of conveyance of all the right, title, and interest to the said tract of land above described, to wit, the fractional northwest one-fourth of section three, in township one north, of range thirteen east, of the Willamette meridian, to the plaintiff in trust for the several use and benefit as aforesaid, and prays for such other and further relief as the plaintiff may in equity and good conscience
12 be entitled, and for the costs and disbursements of this suit.

Dated September 17, 1877.

N. H. GATES,
Attorney for the Plaintiff.

STATE OF OREGON,
County of Wasco, ss:

I, N. H. Gates, being duly sworn according to law, do say that I am the mayor of Dalles City and that I am the attorney for Dalles City in the above and foregoing complaint, and that the said above and foregoing complaint is true as I verily believe.

N. H. GATES.

Subscribed and sworn to before me this 18th day of September, 1877.

R. F. GIBONS,
County Clerk.

(Endorsed:) Filed September 18, A. D. 1877. R. F. Gibons, clerk.

Filed January 30, 1878.

R. H. LAMSON, *Clerk.*

13 *Summons.*

In the circuit court of the State of Oregon for the county of Wasco.

DALLES CITY, PLAINTIFF,
vs.
THE MISSIONARY SOCIETY OF THE METHODIST Episcopal Church, defendant.

To the Missionary Society of the Methodist Episcopal Church, defendant.

You are hereby required to appear and answer the complaint filed against you in the above entitled suit on or before the 12th of day of November, 1877, that day being the first day of the term of said court next following the publication of this summons for six weeks; and if you fail to answer the said complaint the plaintiff will apply to the court for the relief prayed for therein, to wit, a decree declaring that the said plaintiff is the owner in trust of the certain tract of land described in said plaintiff's complaint, in the county of Wasco, State of Oregon, to wit, the fractional N. W. ¼ of section three (3) in township one, north of range thirteen east, and claimed by you under
14 an act of Congress approved August, 14th, 1848, as a missionary station, and for a judgment against you for the costs and disbursements of this suit dated September 17th, 1877.

N. H. GATES,
Attorney for the Plaintiff.

(Endorsed:) Filed Sept. 27th, 1877. R. F. Gibbons, clerk.

(Endorsed:) Filed January 30, 1878. R. H. Lamson, clerk.

15 *Affidavit for publication of summons.*

In the circuit court of the State of Oregon for the county of Wasco.

DALLES CITY, PLAINTIFF,
vs.
THE MISSIONARY SOCIETY OF THE METHODIST Episcopal Church, defendant.

STATE OF OREGON,
County of Wasco, ss:

I, N. H. Gates, being first duly sworn according to law, do say that I am the attorney for the plaintiff in the above-entitled suit, and that the above-named defendant, The Missionary Society of the Methodist Episcopal Church, is not a resident of the State of Oregon; that said defendant is a foreign corporation, having its residence, office, and place of business in the city of New York, in the State of New York. I further depose and say that personal service of summons in the above-entitled suit cannot be made upon the said defendant within the State of Oregon, and that said defendant, after due diligence and enquiry, cannot be found within this State.

That the above-entitled suit is brought against the said de-
16 fendant to recover certain real property situated in the county of Wasco, State of Oregon, which is claimed by the said defendant; that a cause of suit exists in behalf of the plaintiff herein, and against the said defendant, for the recovery of the said real property, and that

the said defendant is a proper party to this suit. I therefore make this affidavit, and respectfully ask that service of summons be made by publication, as provided by law, and that the order of the above-named court be granted therefor.

N. H. GATES.

Subscribed and sworn to before me this 18th day of Sept., 1877.

R. F. GIBONS,
County Clerk.

Based upon the foregoing application and the duly certified complaint, it is hereby ordered that the summons herein be served by publication thereof once a week for six full consecutive weeks in the Weekly Mountaineer, a weekly newspaper published at the Dalles, Wasco County, Oregon, and within the jurisdiction of the circuit court aforesaid.

17 And it is further ordered that during the publication aforesaid a copy of each issue of said paper containing the same be deposited in the post-office at the Dalles, fully prepaid as to the postage, and carefully addressed to the Missionary Society of the Methodist Episcopal Church at their office in the city of New York, State of New York; and it is further ordered that the plaintiff forthwith cause a certified copy of the complaint and summons herein to be deposited in the post-office at the Dalles, Oregon, fully prepaid as to postage, and addressed to the defendant in manner and form aforesaid. Done and dated this 22d day of September, 1877.

L. L. McARTHUR, *Judge.*

(Endorsed:) Filed September 18, 1877. R. F. Gibons, clerk.

(Endorsed:) Filed January 30, 1878. R. H. Lamson, clerk.

18 *Certificate of Publication.*

STATE OF OREGON,
County of Wasco, ss:

I, William M. Hand, being first duly sworn, do say, that I am foreman in the Mountaineer office, a newspaper of general circulation in Oregon, published weekly in Dalles City, in the county and State aforesaid, and the annexed advertisement has been published in said paper for six consecutive weeks commencing on the 29th day of September, 1877, and ending on the 10th day of November, 1877, seven insertions, and that a copy of the same has been mailed to the defendant at his place of business No. 805 Broadway, New York City, N. Y.

W. M. HAND,
Publisher of Mountaineer.

Subscribed and sworn to before me, this 12th day of November, 1877. In witness whereof, I have hereunto set my hand and affixed the seal of said county the day and date above writtten.

R. F. GIBONS,
County Clerk.

[Annexed Advertisement.]

Summons.

19 In the circuit court of the State of Oregon for the county of Wasco.

DALLES CITY, PLAINTIFF,
vs.
THE MISSIONARY SOCIETY OF THE METHODIST Episcopal Church, Defendant.

In the name of the State of Oregon:

You are hereby required to appear and answer the complaint filed against you in the above entitled suit, on or before the 12th day of November, 1877, that day being the first day of the term of said court next following the publication of this summons for six weeks; and if you fail to answer said complaint the plaintiff will apply to the court for the relief prayed for therein, to wit: A decree declaring that the said plaintiff is the owner in trust of the certain tract of land described in the plaintiff's complaint, in the county of Wasco, State of Oregon, to wit, the fractional N. W. ¼ of section three (3) in township one (1) N., of range thirteen (13) East, and claimed by you under an act of Congress approved August 14th, 1848, as a Missionary Station, and for a
20 judgment against you for the costs and disbursements of this suit.

This summons is published by order of Hon. L. L. McArthur, judge of said court, dated the 22d day of September, 1877.

N. H. YATES,
Attorney for the Plaintiff.

1 W. 7.

(Endorsed:) Filed Nov. 12, 1877.

R. F. GIBONS,
Clerk.

(Endorsed:) Filed January 30, 1878.

R. H. LAMSON,
Clerk.

21 *Demurrer to complaint.*

In the circuit court of the State of Oregon for the county of Wasco.

DALLES CITY, PLAINTIFF,
vs.
THE MISSIONARY SOCIETY OF THE METHODIST Episcopal Church, defendant.

Now comes the above-named defendant, The Missionary Society of the Methodist Episcopal Church, by its attorney, J. C. Cartwright, and demurs to the plaintiff's complaint on file in the above-entitled suit, and for grounds of demurrer alleges that said complaint does not state facts sufficient to constitute a cause of suit.

J. C. CARTWRIGHT,
Att'y for Defendant.

(Endorsed:) Filed November 12, 1877. R. F. Gibons, clerk.

(Endorsed:) Filed January 30, 1878. R. H. Lamson, clerk.

22 *Petition for the removal of cause to the circuit court of the United States for the district of Oregon.*

DALLES CITY, PLAINTIFF,
vs.
THE MISSIONARY SOCIETY OF THE METHODIST Episcopal Church, defendant.

To the circuit court of the State of Oregon for the county of Wasco:

I. The petition of the defendant shows that a suit has been brought against the petitioner in this court by the plaintiff above named.

II. That this suit is brought by the plaintiff to quiet their pretended title to certain lands described in the complaint on file herein, and of which the defendant is the owner in fee, claiming the title by grant from the United States, and holding a patent from the United States therefor.

III. That the land in question is the fractional N. W. ¼ of section 3, T. 1 N., range 13 E., as described in the plaintiff's complaint, and lies within the corporate limits of Dalles City, in Wasco County,
23 in the State and district of Oregon, and that the land so in dispute exceeds five hundred dollars in value, and is of the value of, to wit, twenty thousand dollars.

XV. That the petitioner is a corporation created by the laws of the State of New York, and is doing business therein with its principal office in New York City, and said corporation has not any agent within this State on whom process against it may be served according to the laws of this State.

V. That the November term, A. D. 1877, of the circuit court of the State of Oregon for Wasco County, is the term of said court at which the above-entitled suit could be first tried, and that there has been no trial thereof.

VI. That the petitioner hereby offers good and sufficient security for its entering in the next circuit court of the United States for the district of Oregon on the first day of its next session a copy of the record in the above-entitled suit, and also for their appearing and enter-
24 ing special bail in the suit, if special bail were originally required therein according to the law and practice of the United States and its courts.

Your petitioner therefore asks that the said cause may be removed for trial into the next circuit court of the United States for the district of Oregon, to be held at Portland, in said district, pursuant to the provisions of said statutes of the United States, in such case made and provided, and that this court do accept the surety offered by your petitioner as aforesaid, and do proceed no further in the said cause, and for such further order or relief in the premises as may be just.

J. C. CARTWRIGHT,
Agent and Att'y for the Defendant.

STATE OF OREGON,
County of Wasco, ss:

I, J. C. Cartwright, being duly sworn, say I am agent and attorney for the defendant above named, the petitioner herein, and that the foregoing petition is true, as I verily believe; that the reason this affidavit is not made by the petitioner is, that said petitioner is a corpora-

25 tion, and not within this county, and is not capable of making the same.

J. C. CARTWRIGHT.

Subscribed and sworn to before me this 12th day of November, A. D. 1877.

R. F. GIBONS, *Clerk.*

(Endorsed:) Filed November 12, 1877. R. F. Gibons, clerk.

(Endorsed:) Filed January 30, 1878. R. H. Lamson, clerk.

26 *Bond.*

In the circuit court of the State of Oregon for the county of Wasco.

DALLES CITY, PLAINTIFF,
vs.
THE MISSIONARY SOCIETY OF THE METHODIST Episcopal Church, defendant.

Know all men by these presents, that we, Joseph Bagley and James Fulton, of Dalles City, Wasco County, and State of Oregon, are held and firmly bound unto Dalles City, plaintiff, in the above-entitled suit, and to their successors in office, in the sum of two hundred dollars lawful money of the United States, to be paid to said Dalles City, their successors, or assigns, for which payment, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators, and every of them, forever, by these presents, sealed with our seals and dated the 12th day of November, 1877.

27 Whereas the above-named plaintiff, Dalles City, has commenced a suit in the circuit court of the State of Oregon, for the county of Wasco, against the above named defendant, the Missionary Society of the Methodist Episcopal Church, and that at the term of said court at which said suit could be first tried, and before the trial thereof, the said defendant has filed its petition for the removal of the cause into the next circuit court of the United States for the district of Oregon, to be held at Portland, in said district.

Now, therefore, the condition of the above obligation is such that if the said Missionary Society of the Methodist Episcopal Church, the defendant in said suit, shall enter in said circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and shall also then and there appear and enter special bail in the cause, if special bail were therein originally required according to the law and the practice of the United States and its courts, and shall pay all costs that may be awarded by the said circuit court, if the

28 said court shall hold that said suit was wrongfully or improperly removed thereto, then these presents shall be void; otherwise to remain in full force.

JOSEPH BAGLEY. [SEAL.]
JAMES FULTON. [SEAL.]

In presence of—
J. C. CARTWRIGHT,
JNO. MICHELL.

STATE OF OREGON,
County of Wasco, ss:

I, Joseph Beezley, being first duly sworn, say that I am neither a counsellor nor attorney-at-law, sheriff, clerk of any court, or other offi-

cer of any court, and I am a resident and householder within the State of Oregon, and I am worth four hundred dollars over and above all debts and liabilities and exclusive of property exempt from execution.

JOSEPH BEEZLEY.

Subscribed and sworn to before me this tenth day of November, A. D. 1877.

R. F. GIBONS,
County Clerk.

STATE OF OREGON,
County of Wasco, ss:

29 I, James Fulton, being first duly sworn, say that I am neither a counsellor nor attorney-at-law, sheriff, clerk of any court, or other officer of any court, and am a resident and householder within the State of Oregon, and I am worth four hundred dollars over and above all debts and liabilities and exclusive of property exempt from execution.

JAMES FULTON.

Subscribed and sworn to before me this tenth day of November, A. D. 1877.

R. F. GIBONS,
County Clerk.

(Endorsed:) Filed November 12, 1877. R. F. Gibons, clerk.

(Endorsed:) Filed January 30, 1878. R. H. Lamson, clerk.

30 *Order transferring cause to U. S. circuit court for Oregon.*

At a regular term of the hon. the circuit court of the State of Oregon for the county of Wasco, begun and held at the court-house in Dalles City, on Monday the 12th day of November, A. D. 1877, at ten o'clock a. m., at which were present the following officers, to wit: Hon. L. L. McArthur, judge; L. B. Ison, dis't attorney; J. B. Crossen, sheriff; and R. F. Gibons, clerk.

And among other, the following proceeding was had on Tuesday, November 13, 1877, the same being the second judicial day of said term, viz:

DALLES CITY,
vs.
THE MISSIONARY SOCIETY OF THE METHODIST EPISCOPAL CHURCH.

Now upon this day this cause came on to be heard upon the defendant's petition for change of cause to the United States circuit court, the plaintiff appearing by N. H. Gates, of counsel, and the defendant

31 by J. C. Cartwright, of counsel; the same was submitted without argument; and it appearing that the matters in dispute herein exceed, exclusive of costs, the sum of $500, and that said defendant is a corporation doing business in the State of New York, having its principal office in said State; and it further appearing that a good and sufficient bond in the sum of $200 has been filed herein; and after due consideration by the court, it is ordered that said petition be granted and that the place of trial of this cause be changed to the United States circuit court to be holden at Portland, Oregon, at its next regular ses-

sion; and it is further ordered that a transcript of the proceedings herein be forthwith transmitted to the clerk of said court.

(Signed) L. L. McARTHUR, *Judge.*

DISTRICT OF OREGON,
County of Wasco, ss:

I, R. F. Gibons, county clerk in and for said Wasco County, and ex-officio clerk of the circuit court of the State of Oregon for Wasco
32 County, do hereby certify that I have compared the foregoing with the original entry *entry* in the journal of said court and that it is a true and correct transcript therefrom and of the whole of said original as the same appears of record at my office and in my custody.

In witness whereof I have hereunto set my hand and affixed the seal of said circuit court this 28th day of January, A. D. 1878.

[SEAL.] R. F. GIBONS, *Clerk.*

(Endorsed:) Filed January 30, 1878. R. H. Lamson, clerk.

33 And, afterwards, to wit, on Monday, the 8th day of April, 1878, the same being the 1st judicial day of the regular April term of said court, present the honorable Matthew P. Deady, United States district judge presiding, the following proceedings were had in said cause, to wit:

DALLES CITY
vs. } No. 390.
THE MISSIONARY SOCIETY OF THE M. E. CHURCH.

APRIL 8TH, 1878.

Now, at this day, comes the plaintiff, by Mr. N. H. Gates, of counsel, and the defendant, by Mr. Rufus Mallory and Mr. J. C. Cartwright, and on motion of said defendant it is ordered that said defendant have leave to amend its demurrer herein, and *and* that said demurrer be set for hearing to-morrow, April 9th, 1878.

33½ And, afterwards, to wit, on the 9th day of April 7, 1878, there was duly filed in said court a demurrer to complaint, in words and figures as follows, to wit:

34 *Demurrer to complaint.*

In the circuit court of the United States for the district of Oregon.

DALLES CITY
vs.
THE MISSIONARY SOCIETY OF THE METHODIST Episcopal Church.

Now comes the said defendant and demurs to the complaint of the plaintiff filed herein, and for cause of demurrer alleges that said complaint does not state facts sufficient to constitute a cause of action.

And the defendant demurs specially to that portion of said complaint commencing at the word "and," on the 9th line of the 10th page, to and including the word "same," on the 25th line of the same page of the complaint, for the reason that the issuance of a patent to the defendant for the lands therein referred to and described furnishes no cause of suit to quiet title to lands in Dalles City.

JOHN C. CARTWRIGHT & RUFUS MALLORY,
Attorneys for Def't.

(Endorsed:) Filed April 9th, 1878. R. H. Lamson, clerk.

35 And, afterwards, to wit, on Tuesday, the 9th day of April, 1878, the same being the 2d judicial day of the regular April term of said court, present the Honorable Matthew P. Deady, United States district judge presiding, the following proceedings were had in said cause, to wit:

DALLES CITY
vs.
THE MISSIONARY SOCIETY OF THE M. E. CHURCH. } No. 390.

APRIL 9TH, 1878.

Now, at this day, comes the plaintiff, by Messrs. N. H. Gates, James K. Kelly, and William Strong, its counsel, and the defendant by Messrs. Rufus Mallory and John C. Cartwright, its counsel, and this cause comes on to be heard on the demurrer to the complaint herein, and was argued by counsel, and taken under advisement by the court.

35½ And, afterwards, to wit, on Wednesday, the 17th day of April, 1878, the same being the 6th judicial day of the regular April term of said court, present the Honorable Matthew P. Deady, United States district judge presiding, the following proceedings were had in this cause, to wit:

36 *Order overruling demurrer.*

In the circuit court of the United States for the district of Oregon.

DALLES CITY
vs.
THE MISSIONARY SOCIETY OF THE METHODIST Episcopal Church. } No. 390.

APRIL 17, 1878.

Now at this day comes the plaintiff, by Messrs. James K. Kelly and William Strong and N. H. Gates, of counsel, and the defendant, by Mr. Rufus Mallory and Mr. J. C. Cartwright, of counsel, and the court having heard the argument of counsel on the demurrer to the complaint herein, and duly considered the same, it is ordered that said demurrers, both general and special, be, and the same are hereby, overruled, with leave to defendant to set up and insist upon the same matters in the answer on final hearing; and the plaintiff is hereby directed to restate his case in the form of a bill in equity and to serve a copy thereof upon the defendant or its attorney within thirty days.

(Signed) DEADY, *J.*

(Endorsed:) Filed and entered April 17, 1878. R. H. Lamson, clerk.

36½ And afterwards, to wit, on the 2nd day of May, 1878, there was duly filed in said court a bill in equity, in words and figures as follows, to wit:

37 *Bill in equity.*

In the circuit court of the United States for the district of Oregon.

DALLES CITY, COMPLAINANT,
vs.
THE MISSIONARY SOCIETY OF THE METHODIST Episcopal Church, defendant.

To the judges of the circuit court of the United States for the district of Oregon:

Dalles city, a municipal corporation duly incorporated and organized under the laws of Oregon, in the county of Wasco, in the State of Oregon, brings this its bill against the Missionary Society of the Methodist Episcopal Church, a duly organized corporation under the laws of New York.

And thereupon your orator complains and says that it was incorporated by an act of the legislative assembly of the Territory of Oregon, entitled "An act to incorporate Dalles City," passed January 26, 1857, which act was afterwards amended by the said legislative assem-
38 bly by an act entitled "An act to amend an act entitled 'An act to incorporate Dalles City,'" passed January 20, 1859. That by the first section of the last-named act the boundaries of Dalles City were established as follows:

Beginning in the middle of the Columbia River, at a point one north of the northern terminus of the east line made by the United States as a military reserve line in Wasco County; thence south to and with said military reserve line to what is known as Sugarloaf Rock, and corner of said reserve; thence east to a point that will intersect the east side of Fifth street of Laughlin's addition to Dalles City; thence north to and with said Fifth street direct to the middle of the Columbia River, to the place of beginning.

And your orator says that long prior to the passage of the said act of incorporation, to wit, in the year 1852, a large portion of the land within the said described boundaries of Dalles City was settled upon and occupied as a town site for the purposes of business and trade and not for agriculture, and has been occupied as such ever since that
39 time. That during the year 1855 the lawfully constituted authorities of Wasco County caused the same to be surveyed and platted into lots, blocks, streets, and alleys, and the plat thereof to be recorded in the recorder's office of said county.

And your orator further says that a survey was made by the United States of the public lands so occupied as a town site, and such survey approved on the 4th day of February, 1860; and that on the 19th day of April, 1860, the corporate authorities of Dalles City made an application to enter at the land office of the United States at Oregon City the fractional northwest quarter of section 3, in township one of range thirteen east, containing one hundred and twelve acres, more or less, in trust for the several use and benefit of the occupants thereof, according to their respective interests, in pursuance of the act of Congress approved May 23d, 1844, and that the said land in the fractional northwest quarter of section 3, in T. 1 N., R. 13 E., is the land so occupied as such town site as aforesaid.

40 And your orator says that the said corporate authorities of Dalles City paid to the receiver of the said land office at the rate of one dollar and a quarter per acre, being the sum of one hundred and

forty dollars for the said land in said fractional quarter section, to enter the same in said land office, and that it is now the owner of said fractional northwest quarter section of land in trust for the several use and benefit of the occupants thereof, according to their respective interests.

And your orator further says that the said fractional northwest quarter of section 3, T. 1 N., R. 13 E., is within the boundaries of a certain tract of land containing 643.37 acres, which the said defendant claims to own in fee simple (except such portions thereof as it may have already sold), and for which a patent was issued by the United States to the defendant on the 9th day of July, 1875, and which tract is more particularly described as follows:

Beginning at the northeast corner of their said claim, in sec.
41 3, T. 1 N., R. 13 E., and on the left bank of the Columbia River at a set post; thence south 63.27 chains to a set post in section 3, for the southeast corner; thence west 80.00 chains to a set post in section 4, for the southwest corner; thence north 87.00 chains to a set post in section 33, T. 2 N., R. 13 E., for the northwest corner; thence east 45.19 chains to a set post on the left bank of the Columbia River, in section 34; thence with the meanders of the river S. 47° east 14.58 chains; thence S. 38° E., 4.00 chains; thence S. 70° E., 8.78 chains; thence S. 76½° E., 9.20 chains, to the place of beginning.

And your orator further says that the defendant claims to own the said tract of land, including the said fractional N. W. ¼ of section 3, in T. 1 N., R. 13 E., under and by virtue of the second proviso in section one of the act of Congress entitled "An act to establish the Territorial Government of Oregon," approved August 14, 1848, which confirmed
and established the title to the land, not exceeding six hundred
42 and forty acres then occupied as missionary stations among the Indian tribes in the Territory of Oregon, together with the improvements thereon, to the several religious societies to which said missionary stations respectively belonged

That the defendant claims to have established a missionary station on the said tract of land among the Indians at that place, and occupied the same as such missionary station on the 14th day of August, 1848, and for some years prior to that time, and that by virtue of such occupancy it was and is entitled to said tract of land (less the quantity it has already sold and conveyed), and for which it received a patent on the 9th day of July, 1875.

And your orator further says that the said defendant, about the year 1840, established a missionary station on a portion of the said tract of land containing six hundred and forty-three and $\frac{37}{100}$ acres claimed by it, and occupied the same as a missionary station until about the month
of September, 1847, and then intentionally abandoned and dis-
43 continued such occupancy, and never after that time occupied the said tract of land, or any portion thereof, as a missionary station.

And your orator further says that the land in the fractional northwest quarter of section 3 lying between the Bluff and the Columbia River never was occupied as a missionary station at any time, but was occupied by an Indian village between the year 1840 and the 14th day of August, 1848.

And your orators further say that the abandonment of the said missionary station was made in pursuance of an order of the defendant to its missionaries in Oregon directing them to discontinue missionary operations east of the Cascade Mountains. And your orators say that, notwithstanding the said abandonment as a missionary station by the

defendant in September, 1847, and the discontinuance of missionary operations there, the said defendant, about the year 1854, caused the said tract of 643.37 acres of land to be surveyed, and made a claim of title to it under the provisions of the said act of August 14, 1848;
44 that afterwards, to wit, on the 30th day of March, 1854, the said defendant, by Rev. Thomas H. Pearne, its agent and attorney, filed a notification of its claim of title with the surveyor-general of Oregon.

That afterwards the Commissioner of the General Land Office empowered the surveyor-general of Oregon to hear and determine the conflict and controversy existing between your orator, Dalles City, and the defendant, the Missionary Society of the Methodist Episcopal Church; and in pursuance of such authority the said surveyor-general notified the said parties that on the 16th day of February, 1860, he would proceed to the hearing of the said controversy; that from that time until the month of October of the same year testimony was taken before the said surveyor-general by the defendant in support of the validity of its title, and by your orator in opposition to its validity; that after hearing the allegations and proofs of both of said parties the said surveyor-general, on the 2d day of February, 1861, decided that the de-
45 fendant had no right or title whatever to the said tract of land nor to any part thereof; that the said defendant appealed from that decision to the Commissioner of the General Land Office, who, after hearing the argument of counsel, in the month of February, 1863, affirmed the said decision of the surveyor-general of Oregon; that said defendant again appealed from the decision of the Commissioner of the General Land Office to the Secretary of the Interior; that after remaining undecided for many years, the Secretary of the Interior, on the 15th day of March, 1875, decided that the said defendant was entitled to the land in controversy; and on the 9th day of July, 1875, caused a patent to be issued to the defendant for that portion of said tract of land now claimed by your orator, lying within the fractional N. W. ¼ of section three, in T. 1 N., R. 13 E.

1st line, 11th page. And your orator says that the said decision of the Secretary of the Interior was wrongful, unjust and illegal; and that it was made under a misapprehension and mistake both of the law and the facts in regard to the rights of your orator.
46 That there was no evidence whatever before him showing or tending to prove that any portion of the said tract of land claimed by
13th line, 11th page. your orator ever was occupied as a missionary station.

And your orator says that the said patent was issued to defendant in violation of the rights of your orator.

17th line, 11th page. And your orator further says that the said defendant, the missionary society of the Methodist Episcopal Church, on the 14th day of August, 1848, occupied a tract of land as a missionary station near the town of Salem, in Oregon Territory; that on the 30th day of April, 1853, the said defendant by Thomas H. Pearne, its agent and attorney, filed in the office of the register of the land office at Oregon City a notification of its claim to the said tract of land containing 97.39 acres situate in sections 23 & 26 in T. 7 S., R. 3 W., and that it was entitled to the same under and by virtue of the said act of Congress approved August 14, 1848. That afterward the Commissioner of the General Land Office directed the surveyor general of Oregon
47 to determine the validity of said claim, and that said surveyor general, in the year 1861, decided that the defendant was so entitled under the said act of Congress approved August 14, 1848, to the

said tract of land containing 97.39 acres, which decision was afterwards affirmed by the Commissioner of the General Land Office; since which time the title of the said defendant to the said tract of land has been acknowledged by the United States and unquestioned by any one.

Last line, 12th page.
1st line, 13th page.
5th line, 13th page.

And your orator denies the right of the said defendant to more than one tract of land under the provisions of the said act of Congress, approved August 14, 1848.

In consideration whereof, and forasmuch as your orator is without adequate remedy save in a court of equity, your orator prays that the said defendant (who has appeared in this court) may be required to answer upon oath all and singular the matters and things hereinbefore set forth and complained of, and especially to answer and set forth—

1st. Whether the missionary society of the Methodist Episcopal
48 Church did not some time prior to the month of September, 1847, through its agents, direct its missionaries in Oregon to discontinue missionary operations at the Dalles?

2d. Whether it did not through its agents, in or about the month of September, 1847, sell and dispose of its missionary station at the Dalles to Dr. Marcus Whitman?

3d. Whether it was, on the 14th day of August, 1848, in the occupancy of the said tract of land or any part thereof as a missionary station?

4th. Whether the Missionary Society of the Methodist Episcopal Church at any time occupied any part of the land in said tract of 643.37 acres lying between the Columbia River and the bluffs or first ledge of rocks? If so, how was it occupied and by whom?

5th. Was not that portion of the said tract lying between the Columbia River and the bluff occupied by an Indian village between the year 1840 and the 14th day of August, 1848?

And your orator prays that this honorable court, upon the final
49 hearing of this cause, will adjudge and decree that your orator is the owner of the said tract of land, to wit, the NW. ¼ of sec. 3 in T. 1 N., R. 13 E., containing 112 acres, in trust for the several use and benefit of the occupants thereof, and that the defendant holds the legal title in trust for your orator as aforesaid, and that the said defendant be decreed to make a conveyance of the same to your orator for the purposes aforesaid, and for such other and further relief as it may be entitled to in a court of equity.

N. H. GATES & JAMES K. KELLY,
Solicitors and of Counsel for Dalles City, Complainant.

STATE OF OREGON,
County of Multnomah, ss:

I, N. H. Gates, being duly sworn, do say that I am the mayor of Dalles City, and attorney for the said city in this suit, and that I believe the foregoing bill to be true.

N. H. GATES.

Subscribed and sworn to before me this May 2d, 1878.

R. H. LAMSON,
Clerk & U. S. Com'r.

(Endorsed:) Filed May 2d, 1878. R. H. Lamson, clerk.

49½ And afterwards, to wit, on the 27th day of June, 1878, there was duly filed in said court a motion in words and figures as follows:

50 *Motion.*

In the circuit court of the United States for the district of Oregon.

DALLES CITY, COMPLAINANT,
vs.
THE MISSIONARY SOCIETY OF THE METHODIST EPISCOPAL CHURCH, defendant.

Comes now the said defendant, by its solicitors, and moves the court to strike out of the complainant's bill the following words, to wit:

1st. Beginning at the word "and" on the first line of the eleventh page of said bill, to and including the word "station" on the 13th line of the same page, for the reason that the same is immaterial and constitutes no cause of suit.

2d. And moves the court to strike out of said bill the following words: Beginning at the word "and" in the 17th line of the 11th page of said bill, to and including the word "one" on the last line of the 12th page thereof, for the reason that the same is immaterial and irrelevant.

51 3d. And moves the court to strike out of said bill the following words: Beginning at the word "and" in the first line of the 13th page, to and including the figures "1848," for the same reason as above.

J. C. CARTWRIGHT & RUFUS MALLORY,
Solicitors for Defendant.

(Endorsed:) Filed June 27, 1878. R. H. Lamson, clerk.

51½ And afterwards, to wit, on Monday, the 8th day of July, 1878, the same being the 35th judicial day of the regular April term of said court, present the Honorable Matthew P. Deady, United States district judge presiding, the following proceedings were had in said cause, to wit:

52 *Order.*

In the circuit court of the United States for the district of Oregon.

DALLES CITY
vs.
THE MISSIONARY SOCIETY OF THE METHODIST EPISCOPAL CHURCH. } No. 390.

JULY 8TH, 1878.

Now at this day come the complainant, by Mr. James K. Kelly, of counsel, and the defendant, by Mr. Rufus Mallary, of counsel, and the motion filed herein to strike out parts of complainant's bill being submitted without argument, it is ordered that said motion be and the same is hereby denied, with leave to defendant to file exceptions to said bill.

(Signed) DEADY, *J.*

(Endorsed:) Entered and filed July 8th, 1878. R. H. Lamson, clerk.

52½ And afterwards, to wit, on the 9th day of July, 1878, there was duly filed in said court exceptions to the bill, in words and figures as follows, to wit:

53 *Exceptions to bill.*

In the circuit court of the United States for the district of Oregon.

DALLES CITY, COMPLAINANT,
vs.
THE MISSIONARY SOCIETY OF THE METHODIST Episcopal Church, defendant.

The defendant comes now and excepts to the parts of the complainant's bill hereinafter specified and pointed out, for the reason and upon the grounds that said specified parts are irrelevant and impertinent, viz: 1st. Beginning at the word "and" in the first line of the 11th page of said bill, to and including the word "station" on the 13th line of the same page.

2d. Beginning at the word "and" in the 17th line of the 11th page, and extending to and including the word "one" on the last line of the 12th page.

3d. Beginning at the word "and" in the first line of the 13th
54 page and extending to and including the figures "1848" in the 5th line of the 13th page.

Defendant says the said specified parts of said bill, and each and every of them, are irrelevant and impertinent, and it therefore excepts thereto.

JOHN C. CARTWRIGHT & RUFUS MALLARY,
Solicitors for defendant.

(Endorsed:) Filed July 9, 1878. R. H. Lamson, clerk.

55 And afterwards, to wit, on Monday, the 15th day of July, 1878, the same being the 36th judicial day of the regular April term of said court, present the Honorable Matthew P. Deady, United States district judge presiding, the following proceedings were had in this cause, to wit:

DALLES CITY
vs.
THE MISSIONARY SOCIETY OF THE M. E. Church. } No. 390.

JULY 15th, 1878.

Now at this day comes the complainant, by Mr. James K. Kelly, of counsel, and the defendant, by Mr. Rufus Mallory, of counsel, and this cause comes on to be heard on the exceptions filed to the bill herein; and the court having heard the argument of counsel will advise thereof.

55½ And afterwards, to wit, on Saturday, the 27th day of July, 1878, the same being the 42d judicial day of the regular April term of said court, present the Honorable Matthew P. Deady, United States district judge presiding, the following proceedings were had in said cause, to wit:

56 *Order.*

In the circuit court of the United States for the district of Oregon.

DALLES CITY
vs.
THE MISSIONARY SOCIETY OF THE METHODIST Episcopal Church. } No. 390.

JULY 27, 1878.

Now at this day come the complainant by Mr. James Kelly, of counsel, and the defendant by Mr. Rufus Mallory, of counsel, and this cause having been heretofore heard on the exceptions filed to the bill herein and argued by counsel and taken under advisement by the court; and now at this day the court being fully advised in the premises, it is ordered that said exceptions be, and they are hereby, disallowed, and that defendant have two weeks in which to answer the bill of complaint herein.

(Signed) DEADY, *J.*

(Endorsed:) Filed and entered July 27, 1878. R. H. Lamson, *Clerk*.

56½. And afterwards, to wit, on the 12th day of August, 1878, there was duly filed in said court an answer, in words and figures as follows, to wit:

57 *Answer.*

In the circuit court of the United States for the district of Oregon.

DALLES CITY, COMPLAINANT,
vs.
THE MISSIONARY SOCIETY OF THE METHODIST Episcopal Church, defendant.

To the judges of the circuit court of the United States for the district of Oregon.

This defendant, now and at all times hereafter, saving to itself all benefit and advantage of exceptions which can or may be had or taken to the many uncertainties and other imperfections in said complainant's bill contained, for answer thereto, or unto so much or such parts thereof as the defendant is advised is or are material or necessary for it to answer, answering, says:

It admits that the complainant was incorporated by the several acts of the legislature referred to in its bill of complaint, and admits that its corporate limits include the land referred to and described in
58 said complainant's bill as included therein; defendant denies any knowledge or information sufficient to form a belief as to whether in the year 1852 a large portion or any portion of the land within the said described boundaries of Dalles City was settled upon and occupied as a town site; but defendant admits that at some time during the time between 1855 and 1860 some of the land included within the corporate limits of said Dalles City was laid out into lots, blocks, streets and alleys, and that a plat thereof was recorded in the recorder's office in Wasco County.

Defendant admits that a survey was made of the public lands *of the public lands* of the United States occupied by said corporation, and that such survey was approved the 4th day of April, 1860, but defendant denies any knowledge or information sufficient to form a belief as to whether the corporate authorities of Dalles City did, on the 19th day

of April, 1860, make application to enter at the land office of the United States at Oregon City the fractional N. W. ¼ of sec. 3 in
59 T. 1 N., R. 13 E., containing one hundred and twelve acres, more or less, in trust for the several use and benefit of the occupants thereof according to their respective interest as alleged in said bill, or for any other use or purpose, or in any other manner whatever. And defendant admits that the said fractional N. W. ¼ of sec. 3 in T. 1 N., R. 13 E., is within the said corporate limits of said Dalles City.

Defendant denies any knowledge or information sufficient to form a belief as to whether the corporate authorities of Dalles City paid the receiver of said land office at the rate of one dollar and a quarter an acre, being the sum of one hundred and forty dollars for the said fractional quarter section, to enter the same in said land office. And the defendant denies that the plaintiff is now or ever has been the owner of the said fractional quarter section of land in trust, as alleged in said bill of complaint, or otherwise.

Defendant admits that the said fractional quarter section in sec. 3, T. 1 N., R. 13 E., is within the boundaries of a tract of 643.37 acres
60 described in complainant's bill, and for the tract so described defendant holds a patent which bears date the 9th day of July, 1875, as therein alleged.

Defendant admits that it claims to own, and avers and says that it does own, the said fractional N. W. ¼ of sec. 3, T. 1 N., R. 13 E., under the provisions of the act of Congress in said complainant's bill mentioned, approved August 14th, 1848, except such fractions thereof as it may have heretofore disposed of. Defendant admits that it claims to have established a missionary station on the said tract of 643.37 acres of land, among the Indian tribes at that place, and to have occupied the same within the meaning of the act of Congress approved August 14, 1848, on the said 14th day of August, 1848, as such missionary station, and for many years prior thereto; and that by virtue of said occupancy and its establishment and maintaining of said missionary station it became, and was, and is, entitled to receive, and did receive, the said patent, dated the 9th day of July, 1875, all of which will more fully hereafter appear.

61 Defendant admits that about the year 1840 it established a missionary station upon the said tract of 643.37 acres of land claimed by it and occupied the same as a missionary station until about the month of September, 1847; but defendant denies that it intentionally abandoned and discontinued such occupancy, as alleged in said bill, and denies that it never after that time occupied the said tract, or any portion thereof, as a missionary station; and defendant says that the said 643.37 acres of land was occupied as a missionary station by its agents and missionaries, and by others with its permission, from the time said station was first founded until long after the said 14th day of August, 1848, except during such portion of said time as a condition of Indian hostilities and war in that section of country made it unsafe, injudicious, and impracticable to do so, as will hereafter more fully appear.

Defendant denies that the land in the said fractional N. W. ¼ of sec. 3, T. 1 N., R. 13 E., lying between the Bluff and the Columbia
62 River, never was occupied as a missionary station at any time, but avers that it was included in and formed a part of said mission claim of 643.37 acres, and denies that the said part of said fractional N. W. ¼ of sec. 3 was occupied as an Indian village between the year 1840 and the 14th of August, 1848, except as the Indians were

allowed to remain there by the agent of the defendant, or as they remained there in spite of the defendant or its agents during the existence of the Indian hostilities.

Defendant denies that the said alleged and pretended abandonment of said missionary station was made in pursuance of an order made by itself to its missionaries in Oregon directing them to discontinue missionary operations east of the Cascade Mountains, and defendant denies that it made any such order to its missionaries at any time, and denies that it ever did abandon said missionary station with a view to the discontinuance of missionary labors there.

63 Defendant denies that, in the year 1854, it caused the said tract of land to be surveyed, but it says that formal notification of its claim to said tract of 643.37 acres was filed in the office of the surveyor-general of Oregon, in the year 1854, by Thomas H. Pearne, agent for the defendant.

The defendant admits that the proceedings before the land department were had in the manner as stated in complainant's bill, but it denies that the decision of the Secretary of the Interior as rendered in said controversy was wrongful, unjust, or illegal, and denies that it was made under a misapprehension or mistake either of law or fact in regard to the rights of the complainant; denies that there was no evidence whatever before him showing or tending to prove that any portion of the said tract of land claimed by the complainant was occupied as a missionary station, and defendant denies that the said patent was issued to it in violation of any of the *defendant's* rights.

64 Defendant denies that, on the 14th day of August, 1848, it occupied a tract of land near Salem, in Oregon Territory, as a missionary station among the Indian tribes, but it says that it was in possession of a tract of land near Salem aforesaid, which its agent, Thomas H. Pearne, on the 30th day of April, 1853, claimed under the said second proviso of the first section of said act of Congress approved August 14, 1848, and that the said Thomas H. Pearne, on the said 30th day of April, 1853, filed in the office of the register of the land office, at Oregon City, a notification of a claim of the defendant to a tract of land containing 97.39 acres, situated in sections 23 & 26 in t. 7 s., r. 3 w., and denies any knowledge or information sufficient to form a belief as to whether it is entitled to said tract of land under the said act of Congress approved August 14, 1848.

65 Defendant denies any knowledge or information sufficient to form a belief as to whether afterward or at any time the Commissioner of the General Land Office directed the surveyor-general of Oregon to determine the validity of said claim, or whether the said surveyor-general, in the year 1861, or at any time, decided that the defendant was entitled to, under said act of Congress, to the said tract of land containing 97.39 acres, and denies any knowledge or information sufficient to form a belief as to whether said decision was affirmed by the Commissioner of the General Land Office, or as to whether its title to the said tract of land has since that time been acknowledged by the United States; and denies that its title to said land under the said claim made by said Thomas H. Pearne under the said act of Congress approved August 14, 1848, has been unquestioned by any one; and defendant avers and says that, about the year 18 , one Joseph Watt, of Salem, aforesaid, filed his notification of his intention to claim the said tract of land under the provisions of the act of Congress approved September 27, 1850, commonly known as the "donation law," and entered upon and resided upon and cultivated the same as he was required to do to secure

a title under the said act of September, 1850, and the defendant has never obtained or been granted or allowed a patent therefor.

The defendant says that it has the right to more than one
66 tract of land under the said act of Congress approved August 14, 1848, and claims that it has the right to as many tracts of land as it occupied as missionary stations among the Indian tribes within the meaning of said act on the 14th day of August, 1848.

This defendant further answering the complainant's bill, says, prior to the year 1840, through its agents and missionaries duly empowered and authorized for it in that behalf, caused a missionary station to be established at a point of the Columbia River, then known as Wascopam, which point was at what was then called the Grand Dalles of said river, and its agents and missionaries then and there made claim to a tract of land at that point for the purpose of carrying on the missionary labors in which they were then engaged, which said tract of land is the same tract, as nearly as defendant by a survey could ascertain the same, as the tract of 643.37 acres described in complainant's bill. And defendant says that it opened a farm upon said tract of land, erected
67 thereon a dwelling house, church, and other buildings which were requisite and necessary for the purpose of properly maintaining itself in its efforts to carry on missionary labors among the Indian tribes at that place, and continually from the time it so took possession of said land it carried on its proper missionary labors there with vigor and effect until about the month of September, 1847, having during the period of its said occupation and labor at that place expended not less than thirty thousand in organizing, supporting, and carrying forward its missionary work.

That about the month of August, 1847, while said station was in full and vigorous operation under the charge of the agents and missionaries of the defendant, an arrangement was effected between the said agent of the defendant and one Dr. Marcus Whitman, then an agent of the "American Board of Commissioners of Foreign Missions," a duly incorporated society, incorporated and existing under the laws of the State of Massachusetts, and then engaged in missionary labors
68 in the Territory of Oregon, and particularly in that portion of said Territory which lies east of the Cascade Mountains, by which it was agreed that the said agent of the said "American board" could be allowed to take the said missionary station and occupy it instead of the missionaries and agents of the defendants, provided that said agent of said American board would agree to, and would cause the said missionary labors to be continued there as they were then carried on by the defendant's missionaries; and provided further, that the said agent of the said American board would deliver to the agent of the defendant a check for the sum of six hundred dollars upon the said American board for certain personal property which was owned there by the defendant, and which said agent of said American board desired to purchase, to all of which provisions the said agent of said American board agreed, and thereupon drew the said check for said six hundred dollars for said personal property, and delivered the same to the agent of the defendant, and about the month of September, 1847, with the
69 distinct understanding that said missionary labors were to be continued at said station by said American board, and without any design of abandoning or discontinuing missionary labor, or of permitting it to be discontinued, the defendant's agents and missionaries withdrew from said station and permitted the said agent of the said American board to take possession thereof. But the defendant's agents

and missionaries would not have so withdrawn or permitted the said agent of the said American board to take said possession but for the said understanding and agreement that the said American board would continue the same as aforesaid.

That defendant did not sell or dispose of or receive any pay or any consideration whatever for the said station or for the valuable improvement placed thereon at a great expense.

That it was the intention of the said Dr. Whitman, and the understanding of the agent of the defendant at the time said agreement was made that the said Dr. Whitman should take charge of said station as the agent of said American board and conduct the said missionary labors in person.

70

That as soon as the possession of said station was placed in his hands the said Dr. Whitman proceeded to make arrangements to take permanent possession thereof in person, and in making which he was necessarily required to be temporarily absent therefrom, during which time he provided other agents of the said American board to take temporary charge and to conduct missionary labors in his absence. He was attacked by the hostile Indians, who had at that time risen against the whites, and he and a number of other persons were murdered by them, so that it was not possible for him to return and take possession of said station as he had intended, and to conduct the said missionary labors there.

That he was murdered about the 27th day of November, 1847, and the agents left by him in charge of said station were driven therefrom in a few days, and were compelled to flee for their lives by the hostile Indians.

That the said Indian hostilities contin'ed in that country for a long time, rendering it injudicious, unwise, and unsafe for either the said agents of the said American board or the agents or missionaries of the defendant to return to said station until long after the said 14th day of August, 1848.

71

That on account of the death of the said Dr. Whitman, and on account of the Indian war which continued in that country, then and since known as the Cayuse War, and on account of a proclamation and protest of one H. A. G. Lee, then a superintendent of Indian affairs under the provisional government of Oregon Territory, made on or about the month of July, A. D. 1848, and published at the time, war'ing Protestant missionaries not to venture into the said country, it became and was impossible for the said American board to do more than take said temporary possession of said station, and therefore the remaining agents of said American board in the year 1849, and before the said Indian was *asuyfen* settled as to render it either judicious, wise, or safe for Protestant missionaries to resume missionary labor there, and in order to place the defendant in the rightful possession of what justly belonged to it, offered to retransfer the said station to the defendant, upon the defendant delivering to the agent of said American board the said draft for six hundred dollars. That the agent of the defendant accepted said offer, delivered up the said draft to the agent of the American board, who cancelled the same, and the said agent of the defendant at once resumed the control of said station.

72

That about the month of June, 1850, the said Rev. William Roberts, then superintendent of the defendant' missionary affairs in Oregon, and as agent of the defendant, went to the said missionary station at the Dalles, in company with Rev. Alvin F. Waller, one of the missionaries then, and for a long time prior thereto, in the service of the defendant, and who was in charge of said station at the time the same

was allowed to pass temporarily into the possession of Dr. Witman, in September, 1847, as hereinbefore mention' and stated; that upon their arrival at said station it was not occupied by anyone except the military, which had been occupying the same continuously since the month of December, 1847; that all the building' which had been built upon said grounds by the defendant, and which were in a good condition when the said possession was allowed to pass into the hands of said Dr. Whitman, as aforesaid, were then either wholly destroyed or greatly injured, as was also all other improvements which had been placed upon said tract of land at a great expense to defendant, for the purpose of making the same useful as a missionary station.

That the said Roberts and Waller went to said station in the said month of June, 1850, for the purpose of resuming missionary labors there among the Indian tribes, and to make an accurate survey, and mark out the tract of land to which the defendant was entitled
73 under the said act of Congress approved August 14th, 1848.

That at that time (June, 1850), the said Roberts and Wallar, with the aid of a surveyor, surveyed and marked out the tract of land which the defendant claimed, and to which it was entitled as a missionary station under the said act of Congress of August 14th, 1848, and in locating the same, followed as nearly as they were able to do the lines which it was then understood had been designated for the boundary of said missionary station by the original founders thereof in 1836, the Rev. Jason Lee, H. B. Brewer and others, the land so marked out being the 643.37 acres described in complainant' sbill, and of a part of which defendant now holds a patent, bearing date the 9th day of July, 1875; and defendant says that while the said Roberts and Waller were at the said station in June, 1850, the said Waller held religious services there as a missionary among the Indian tribes, but did not continue such labor for the reason that he was forbidden to do so by the military office, then in command of the troops at that place; that the said tract of land containing 643.37 acres was then taken possession of by the said Roberts as the agent of the defendant so far as he was able or was permitted to do by the said military officer; and that he re-established and resumed missionary labors there to as great an extent and continued the same as long as he was permitted to by the military officer then in com-
74 mand; and that he caused the *the* survey of said land and the notification thereof to be recorded in the record of land claims in Clackamas County in said Territory of Oregon, on the 16th day of November, A. D. 1850, said mission claim then being within the said Clackamas County.

That on the 28th day of February, 1859, the said American board released all its right, title, and interest in and to the land and other property at the Dalles, to this defendant, by its quit-claim deed duly executed and acknowledged on that day, in order to quiet any doubts as to the title of the defendant to said missionary station, and that the defendant has ever since held and still holds the said deed, which deed was duly recorded in the records of deeds of Wasco County, on the 9th day of May, 1859.

And defendant further says, that about the month of March, 1854, Rev. Thos. H. Pearne, then the agent of the defendant, for and on its behalf and in its interest caused a notification of defendant's claim of title to said missionary station, containing 643.37 acres of land under the said act of Congress approved August 14th, 1848, with supporting evidence accompanying the same, to be filed in the office of the surveyor-general of Oregon.

And the defendant says, that long after it had become the owner of said tract of land under the said act of Congress approved August 14th, 1848, and long after it had caused the same to be surveyed and
75 marked by proper posts, stakes, and monuments, and caused notice of said survey to be recorded in the records of land claims in the office of the recorder of said Clackamas County, the said complainant, with full knowledge of the right and claim of the defendant, wrongfully, and in violation of the defendant's said rights, undertook to claim, and did claim, that portion of the said tract of 643.37 acres which is described in the surveys of the United States as the fractional N. W. ¼ of sec. 3 T. 1 N., R. 13 E., and by its said unjust and wrongful claim to said land caused a controversy to arise between the complainant and the defendant concerning the same, which the surveyor-general of Oregon was directed by the Commissioner of the General Land Office to hear and determine. That in pursuance of said direction the surveyor-general, about the year 1860, after giving due notice to the said contesting parties, proceeded to take testimony produced before him by the complainant in support of its claim, and of the defendant in support of its claim; and that in the year 1861, said surveyor-general decided the said controversy against the claim of the defendant and in favor of the claim of the complainant, notwithstanding the evidence before him showed and clearly proved that the defendant was the lawful and rightful owner.

76 That the defendant appealed from said decision of the surveyor-general to the Commissioner of the General Land Office, who, acting under a misapprehension and mistake of the facts and the law applicable to the said controversy, affirmed the said decision of the surveyor-general, and thereupon the defendant again appealed from the decision of the Commissioner of the General Land Office to the Secretary of the Interior, and the said Secretary, after a full, due, and careful examination of the evidence produced in said cause and of the law applicable thereto, reversed the said erroneous decision of the said Commissioner of the General Land Office and decided and held that the defendant was the legal and rightful owner of said tract of land, and that the complainant was not, which decision of the said Secretary was just, legal, and was supported by the testimony presented in the controversy, which decision of the Secretary was rendered on the 15th day of March, 1875, and thereafter on the 9th day of July, 1875, the patent for the said premises which defendant now rightfully holds, was issued.

And defendant further says, that after the title to the said tract of land had been confirmed *in* it by the said act of Congress, approved August 14th, 1848, the military authorities of the United States established a military reservation over a tract of land near the said
77 Dalles, which said military reserve was extended over and meant to include about 353 acres of the defendant' said mission claim.

That afterwards the defendant presented a claim for $20,000 to the Secretary of War for damages it had sustained by reason of the taking of the said 353 acres of said land; that said claim was referred by the Secretary of War to Major Raines in the year 1853, he being then in command of the military forces then stationed at the post established upon said military reservation, for his report upon the merits of said claim and the right of the defendant to the said 353 acres of land; that said Major Raines, after having duly and fully examined the facts concerning the defendant's right to said mission claim, reported to the Secretary of War, said report bearing date the day of , 185 , in favor of the said claim, and recommending that the sum demanded be

paid. That afterward the said claim for payment to the defendant was referred by the Secretary of War to Congress, recommending that an appropriation for the payment thereof be made. That the said claim was referred to the Committee on Military Affairs of the House at the 2d session of the 35 Congress, and after a full examination of the said claim and the right of the defendant to said tract of land under
78 the said act of August 14th, 1848, said committee reported in favor of the defendant's title to said land and in favor of the payment of the said sum of $20,000; said report bearing date January 28th, 1859, and is found in Hous' of Rep. reports No. 1452, ses. 35 Cong. And in pursuance of said report the said sum of $20,000 was appropriated by an act of Congress entitled "An act for the relief of the Missionary Society of the Methodist Episcopal Church," approved June 16, 1860; and the said sum was thereafter paid to defendant.

And the defendant further says that the temporary possession of said missionary station by the said agents of the said American Board of Commissioners of Foreign Missions, under the said agreement with the agents of the defendant, and the failure of the agents of the said American board to comply with said agreement, and the state of war, which prevented the agents and missionarys of the defendant from resuming possession of said station after the agents of said American board were driven therefrom in 1847, by hostile Indians, until long after the 14th day of August, 1848, did not destroy, impair, or affect the defendant's claim to said mission claim containing the said 643.37 acres of land, nor in any manner affect its right thereto under the said act of Congress of August, 14th, 1848, but defendant's right' thereto under the said
79 act remain the same as if the said agents of the said American Board of Commissioners of Foreign Missions had not had temporary possession thereof or a state of war had not existed, and the agents of the defendant had retained and been in the actual possession thereof until and on the said 14th day of August, 1848.

And the defendant further says that, at the time the said fractional NW. ¼ of sec. 3, T. 1 N., R. 13 E. was claimed for a town site, it was well known to the persons making the said claim that the said tract was a part of and was included in the tract of land containing 643.37 acres which the defendant then claimed and owned, having acquired the same as a missionary station under the act of Congress approved August 14th, 1848, and the complainant well knew the same to be true before it commenced this suit. That the complainant has acquired no rights by its said claim as against the right of the defendant; that there is no equity in the demands of the said bill of complaint, and its said demands and prayer ought to be denied, and it' said bill of complaint dismissed. All of which matters and things this defendant is willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

J. C. CARTWRIGHT AND
RUFUS MALLORY,
Solicitors for the Defendant.

80 DISTRICT OF OREGON:

I, John C. Cartwright, being first duly sworn, depose and say I am agent and attorney for the defendant in the above entitled suit, and that the foregoing answer, as well *as well* as the answers to interrogatories hereto appended, are true, as I verily believe.

J. C. CARTWRIGHT.

Subscribed and sworn to before me this 8th day of August, A. D. 1878.

R. H. LAMSON, *Clerk.*

81 Defendant' answering the special interrogatories in the said complainant's bill of complaint contained, and answering each and all of them, answer' and says:

To the interrogatory numbered one the defendant answers: No.

To the interrogatory numbered two the defendant answers: No.

To the interrogatory numbered three the defendant answers: Yes, within the meaning of the act of Congress approved August 14th, 1848, confirming said tract of land to the defendant.

To the interrogatory numbered four the defendant answer': Yes. It was used for landing supplies from the Columbia River, and in transporting supplies to the mission buildings on the bluff. It was used as a place for pasturage for stock and as a camping place for Indians who came to the station to trade and to receive instruction from the missionaries, and was occupied and claimed by the defendant.

To the interrogatory numbered five defendant answers: It was so occupied at times between said dates with the permission and consent of the defendant and for missionary purposes.

(Endorsed:) Filed August 12th, 1878. R. H. Lamson, clerk.

81½ And afterwards, to wit, on the 28th day of September, 1878, there was duly filed in said court exceptions to defendant's answer, in words and figures as follows, to wit:

82 *Exceptions.*

In the circuit court of the United States for the district of Oregon.

DALLES CITY, COMPLAINANT,
vs.
THE MISSIONARY SOCIETY OF THE METHODIST Episcopal Church, defendant.

The said complainant now comes and excepts to that part of the defendant's answer hereinafter specified and pointed out, for the reason that the same is impertinent and irrelevant, to wit:

All that part of said answer commencing on the first line of page (8) eight and ending with the word "dismissed" in the last line of page (20) twenty.

N. H. GATES &
JAMES K. KELLY,
Solicitors for Comp't.

(Endorsed:) Filed Sept. 28, 1878. R. H. Lamson, clerk.

82½ And afterwards, to wit, on Monday, the 28th day of October, 1878, the same being the 8th judicial day of the regular October term of said court, present the honorable Matthew P. Deady, United States district judge, presiding, the following proceedings were had in this cause, to wit:

83 *Order.*

In the circuit court of the United States for the ninth judicial circuit, district of Oregon.

DALLES CITY
vs.
THE MISSIONARY SOCIETY OF THE METHODIST Episcopal Church. } No. 390.

OCTOBER 28TH, 1878.

Now, at this day, comes the complainant, by Mr. James K. Kelly, of counsel, and the defendant, by Mr. Rufus Mallory, of counsel, and, on motion of said complainant, it is ordered that this cause be set for hearing on the exceptions filed to the answer herein on Friday, November 1st, 1878.

(Signed) DEADY, *J.*

Endorsed:) Filed Oct. 28, 1878. R. H. Lamson, clerk.

83½ And afterwards, to wit, on Friday, the 1st day of November, 1878, the same being the 9th judicial day of the regular October term of said court, present the honorable Matthew P. Deady, United States district judge, presiding, the following proceedings were had in said cause, to wit:

84 *Order.*

In the circuit court of the United States for the ninth judicial circuit district of Oregon.

DALLES CITY
vs.
THE MISSIONARY SOCIETY OF THE METHODIST Episcopal Church. } No. 390.

NOVEMBER 1ST, 1878.

Now at this day come the complainant, by Mr. James K. Kelly, of counsel, and the defendant, by Mr. Rufus Mallory, of counsel, and, on motion of said defendant, it is ordered that the hearing of this cause on the exceptions filed to the answer herein be and the same is hereby continued till Tuesday, November 5th, 1878.

(Signed) DEADY, *J.*

(Endorsed:) Filed Nov. 1st, 1878. R. H. Lamson, clerk.

84½ And afterwards, to wit, on Tuesday, the 5th day of November, 1878, the same being the 11th judicial day of the regular October term of said court, present, the honorable Matthew P. Deady, United States district judge, presiding, the following proceedings were had in this cause, to wit:

85 *Order.*

In the circuit court of the United States for the district of Oregon.

DALLES CITY
vs.
THE MISSIONARY SOCIETY OF THE METHODIST Episcopal Church. } No. 390.

NOVEMBER 5, 1878.

Now, at this day, come the complainant, by Messrs. James K. Kelly

and W. Gates, of counsel, and the defendant, by Messrs. J. C. Cartwright and Rufus Mallory, of counsel, and this cause comes on to be heard on the exceptions filed to the answer herein; and the court having heard the argument of counsel will advise thereof.

85½ And afterwards, to wit, on Monday, the 18th day of November, 1878, the same being the 13th judicial day of the regular October term of said court, present, the honorable Matthew P. Deady, United States district judge presiding, the following proceedings were had in said cause, to wit:

86 *Order.*

In the circuit court of the United States for the ninth judicial circuit, district of Oregon.

DALLES CITY
vs.
THE MISSIONARY SOCIETY OF THE M. E. Church. } No. 390.

NOVEMBER 18TH, 1878.

Now, at this day, come the complainant, by Mr. James K. Kelly, of counsel, and the defendant, by Mr. Rufus Mallory, of counsel, and this cause having been heretofore heard on the exceptions filed to the answer herein, and taken under advisement by the court, and now, at this day, the court being fully advised in the premises, it is ordered and adjudged that said exceptions be and they are hereby disallowed, and that complainant have ten days in which to file its reply.

(Signed) DEADY, *J.*

(Endorsed:) Filed November 18th, 1880. R. H. Lamson, clerk.

86½ And afterwards, to wit, on the 20th day of November, 1878, there was duly filed in said court a replication in words and figures as follows, to wit:

87 *Replication.*

In the circuit court of the United States for the district of Oregon.

DALLES CITY, COMPLAINANT,
vs.
THE MISSIONARY SOCIETY OF THE METHODIST EPISCOPAL CHURCH, defendant.

This repli'ant, saving and reserving to itself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insuffi'encies of the answer of the said defendant, for replication thereunto says that it does and will aver, maintain, and prove its said bill to be true, certain, and suffi'ent in law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insuffi'ent in the law to be replied unto by this repli'ant without that that any other matter or thing in said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and suffi'ently replied unto, *and not herein and hereby well and suffic'ently replied unto*, confessed, and avoided, traversed or denied, is true; all of which matters and things this repli'ant is ready to aver, maintain, and prove as this honor-

88 able court shall direct, and humbly prays as in its said bill it has already prayed.

N. H. GATES
Solicitor for Compt.

(Endorsed:) Filed Nov. 20, 1878. R. H. Lamson, clerk.

88½ And afterwards, to wit, on the 10th day of February, 1879, there was duly filed in said court a stipulation in words and figures as follows, to wit:

89 *Stipulation.*

In the circuit court of the United States for the district of Oregon.

In the three causes now pending in the circuit court of the United States for the district of Oregon between Dalles City, complainants, Kelly and Wait complainants, and Kelly, Wait and Humason, complainants, against The Missionary Society of the Methodist Episcopal Church, defendants, we, the undersigned attorneys, do hereby agree and stipulate as follows, to wit:

1st. That the evidence taken in the contested land case commenced before the surveyor-gen'l of the State of Oregon, and heard on the 16th of Feb'y, 1860, by that officer, and now on file in his office, wherein Dalles City, Windsor D. Bigelow, and Victor Trevitt were complainants, and The Missionary Society of the M. E. Church was defendant, involving the question of the title to the land now in controversy in all of the above causes, shall be received as evidence on the hearing of said causes in the above entitled court, subject to the objection by either party that the same or any part thereof is inadmissable in a court of equity, provided, 1, there shall be no objection made by either party upon the hearing to the depositions used before the surveyor-gen'l in said contest, and now on file in his office, except to the competency of the testimony; 2nd, that certified copies of such evidence as either
90 party may desire to use upon the hearing of said causes shall be furnished by a commissioner appointed by the court, each party paying for the evidence he received and ordered, respectively, and the cost of obtaining said certified copies from the evidence now on file in surveyor-genl's office to be taxed by the court against the loosing party; 3rd, that the evidence obtained as aforesaid may be used upon the hearing of either of the above specified causes, as the same may be applicable.

January 13, 1879.

JAMES K. KELLY,
For Self, & Att'y for Humason & Wait.
N. H. GATES,
Att'y for Dalles City.
J. C. CARTWRIGHT,
RUFUS MALLORY,
Att'y's for Missionary Society of M. E. Church.

(Endorsed:) Filed Feb. 10, 1879. R. H. Lamson, clerk.

90½ And afterwards, to wit, on the 29th day of September, 1879, there was duly filed in said court a stipulation in words and figures as follows, to wit:

91 *Stipulation.*

In the circuit court of the United States for the district of Oregon.

DALLES CITY
vs.
THE MISSIONARY SOCIETY OF THE METHODIST EPISCOPAL CHURCH. } Stipulation.

It is hereby stipulated and agreed by and between the parties to this suit by their solicitors, that copies of the following papers may be read in evidence the same being papers now on file in the office of the surveyor-general of Oregon, said copies to be certified by the commissioner appointed by the judge of this court to copy the test'm'y in the same. Said copies to be read subject to their legal effect, but no objection shall be made on account of want of original certificates or any other informality, but no objection the subs'ance of the papers as evidence is waived.

1. Petition of the board of managers of the Missionary Society of the M. E. Church to the Sec. of War, July 9, 1858.
2. Petition of the same board to the House of Representatives.
3. Report of Maj. Raines to E. D. Townsend, Aug. 18, 1855.
4. Letters from S. B. Treat to J. P. Durbin, Feb'y, 27, 1858.
5. Same to same, July 5, 1858.
6. Notification of mission claim at The Dalles, by Thos. H.

92 Pearne, March 29, 1854.

7. Lee's letter with extract from McBean, June 24, 1848.
8. Lee to the fathers at Wascokum, June 15, 1848.
7. Affidavits of Waller & Parrish, Nov. 29, 1854.
10. Copy of notification of Dalles mission claim by Wm. Roberts, Aug. 14, 1860.

It is understood that the papers here referred to and described, may be used the same in the cases of J. K. Kelly & Aaron E. Wait, against this defendant in the case of Kelly, Waite & Humason, against same defendant now pending in this court, and that the deposition of Wm. Helm, taken in this case, may be used in all said cases.

JAMES K. KELLY,
Solicitor for the Complainant.
J. C. CARTWRIGHT,
RUFUS MALLORY,
Solicitors for the Defendant.

(Endorsed:) Filed Sept. 29, 1879. R. H. Lamson, clerk.

92½ And afterwards, to wit, on Monday, the 6th day of October, 1879, the same being the 1st judicial day of the regular October term of said court, present, the honorable Matthew P. Deady, United States district judge presiding, the following proceedings were had in said cause, to wit:

93 *Order.*

In the circuit court of the United States for the ninth judicial circuit, district of Oregon.

DALLES CITY
vs.
THE MISSIONARY SOCIETY OF THE METHODIST EPISCOPAL CHURCH. } No. 390.

OCTOBER 6, 1879.

Now at this day come the complainant by Mr. James K. Kelly, of

counsel for complainant, and the defendant by Mr. John C. Cartwright, of counsel, and by agreement of counsel. It is ordered that this cause be and the same is hereby set for trial on Wednesday, October 15, 1879.

(Signed) DEADY, *J.*

(Endorsed:) Filed Oct. 6, 1879. R. H. Lamson, clerk.

94 And afterwards, to wit, on Monday, the 13th day of October, 1879, the same being the 4th judicial day of the regular October term of said court, present, the honorable Matthew P. Deady, United States district judge presiding, the following proceedings were had in this cause, to wit:

DALLES CITY
vs.
THE MISSIONARY SOCIETY OF THE METHODIST EPISCOPAL CHURCH. } No. 390.

OCTOBER 13TH, 1879.

Now at this day come the complainant by Mr. James K. Kelly and Mr. N. H. Gates, its solicitors, and the defendant by Mr. Rufus Mallory and Mr. John C. Cartwright, its solicitors, and this cause comes on to be heard on the bill, answer, testimony and exhibits.

94½ And afterwards, to wit, on Wednesday, the 3d day of December, 1879, the same being the 30th judicial day of the regular October term of said court, present the honorable Matthew T. Deady, United States district judge presiding, the following proceedings were had in this cause, to wit:

95 *Decree.*

In the circuit court of the United States for the ninth judicial circuit, district of Oregon.

DALLES CITY
vs.
THE MISSIONARY SOCIETY OF THE METHODIST EPISCOPAL CHURCH. } No. 390.

DECEMBER 3, 1879.

This cause having been heretofore heard on the bill, answer, reply, the testimony and exhibits, and argued by Mr. James K. Kelly and Mr. N. H. Gates, of counsel for said complainant, and by Mr. Rufus Mallory and Mr. John C. Cartwright, of counsel for said defendant, and taken under advisement by the court; and now, at this day, the court being fully advised in the premises, does find that the equity of the case is with the complainant: that the land described in the bill of complaint herein, to wit, the fractional northwest quarter of section three, in township one north, of range thirteenth east of the Wallamet meridian, was voluntarily abandoned by the defendant as a missionary station in September, one thousand eight hundred and forty-seven, and was not thereafter occupied by the defendant as a missionary station or otherwise; and that the same was not confirmed to the defendant by the

95*a* second proviso of section one of the act of Congress, entitled "An act to establish the territorial government of Oregon," approved August fourteenth, one thousand eight hundred and forty-eight; that

the patent issued to the defendant by the United States on July ninth, one thousand eight hundred and seventy-five, for and including the said described lands was wrongfully issued; that the complainant is entitled to the patent for the lands above described by virtue of an entry thereof in the proper land-office on April eighteenth, one thousand eight hundred and sixty, as a town site under the act of Congress, entitled "An act for the relief of citizens of towns upon the lands of the United States under certain circumstances," approved May twenty-third, one thousand eight hundred and forty-four, in trust for the several use and benefit of the occupants thereof. It is therefore adjudged and decreed that the defendant received the patent for the lands above described as trustee for the complainant herein, and that said defendant do, within ninety days from the date hereof, convey to said complainant by a good and sufficient deed of conveyance with proper covenants against its own acts, to be approved by the master of this court, all the right, title, and interest in the lands above described which it received by means of said patent, and that it pay to said complainant its costs and disbursements herein taxed at dollars.

(Signed) DEADY, *J.*

(Endorsed:) Filed December 3d, 1879. R. H. Lamson, clerk.

96*b* And afterwards, to wit, on the 4th day of December, 1879, there was duly filed in said court an opinion in words and figures, as follows, to wit:

96 JUDGE DEADY'S DECISION.

Decision in the U. S. circuit court, Deady, J.

U. S. circuit court, district of Oregon. Wednesday, Dec. 3, 1879.

DALLES CITY
v.
THE MISSIONARY SOCIETY OF THE M. E. Church. } No. 390.

Suit in equity to establish a trust and for a conveyance.

1. GRANT TO MISSIONS IN OREGON.—The grant to religious societies of mission stations in Oregon, contained in § 1 of the act of August 14, 1848 (9 Stat., 323), is not confined to a single station to each society, but includes as many stations as were then actually occupied by each society for missionary purposes among the Indians.
2. PATENT—SURVEY.—A patent issued under § 2447 of the R. S. upon a survey not approved by the surveyor-general is void; and in case of a grant under § 1 of the act of Aug. 14, 1848, the survey to be approved by the surveyor-general necessarily involves the determination of the question, What is the quantity and boundary of the claim?
3. MISSION STATION.—The grant to religious societies contained in the act aforesaid of the missionary stations occupied by them in Oregon on August 14, 1848, not exceeding 640 acres, is not confined to the land actually enclosed and cultivated by them, but should be construed to include the maximum quantity at each station occupied by them—that is, claimed and in any way used by them, and not in the actual occupation of any one else.
4. OCCUPATION OF MISSION STATION.—Occupancy is a word of narrower signification than possession, and means to possess by laying hold of or being actually upon the thing possessed, continuously and exclusively. Prior to August 14, 1848, the title to all lands in Oregon was in the United States, and therefore no person cou'd have constructive possession of any portion thereof, or any possession thereof or interest therein, except actual possession or occupancy, and when this was given up or abandoned the relation of the party to the land was absolutely terminated.

MISSION STATION AT THE DALLES.—The Missionary Society of the M. E. Church established a mission among the Indians at Wascopam, near the Grand Dalles of the Columbia, in 1838, and in September, 1847, abandoned and transferred the same to Dr. Whitman, of the Presbyterian mission at Wailatpu, and never reoccupied the same; held, that the society did not receive a grant of said station under § 1 of the act of August 14, 1848, because it was not at that date in the actual possession and occupation of the premises, that such occupation was a condition precedent to the taking effect of such grant, and therefore it mattered not whether the failure of the society to occupy the station in August, 1848, was voluntary or was caused by the fear of hostile Indians.

6. PAYMENT BY CONGRESS.—The payment by Congress to the missionary society of $20,000 in June, 1860, on account of the reservation of 353 acres of the Dalles mission station in March, 1850, for military purposes, and the loss or destruction of property thereon since 1847 by Oregon volunteers, Indians, or United States troops, did not have the effect to invest the society with the title to such station then or on August 14, 1848; nor was it even an admission that the society had any legal right to the premises, but only that it asserted some kind of a claim thereto which it was deemed expedient to extinguish; nor could Congress in June, 1860, by a direct recognition of a prior grant to the society, affect the rights of others already acquired in the premises under the town-site and donation acts.

DEADY, J.:

These three suits were commenced on September 18, 1877, in the circuit court for the State, in the county of Wasco. The summons was served by publication, and on September 12 the defendant appeared and had the causes removed to this court, where they were entered on January 30, 1878.

On April 9 there was a demurrer filed to each complaint, which was disallowed, and thereupon, by the direction of the court, on May 2, the plaintiffs in each suit restated their case in the manner of a formal bill in equity. On August 12 the defendant answered the bills, and on September 20 the plaintiffs filed the general replication. In the course of the proceedings, exceptions for impertinence were taken to both the bills and the answers, which were disallowed, and questions raised thereby reserved for consideration upon the final hearing.

On October 15, 1879, the causes were heard together upon the several bills, answers, replications, and the exhibits and depositions in each, and in No. 390 so far as they were applicable to the other two.

Before touching the grounds of the controversy between the parties, it may be well to state their respective cases, so far as they rest upon either the admitted facts or those established beyond controversy.

The defendant is a corporation formed under the laws of New York, and from 1838 to September, 1847, maintained a mission among the Wascopam Indians on the south bank of the Columbia River, at the lower end of the Grand Dalles thereof, at a place since called "The Dalles," in what is now Wasco County; and on July 9, 1875, received a patent from the United States under § 2447 of the R. S. for a tract of land containing 643.37 acres, including the ground occupied by the improvements made at such mission—less 350 acres thereof included in the military reservation—the same being parts of sections 3 and 4 in T. 1 N., of R. 13 W., and section 33 in T. 2 N., of R. 13 W. of the Wallamet meridian, as a mission station occupied by it on August 14, 1848, within the purview of the second proviso to § 1 of the act of that date, "to establish the territorial government of Oregon" (9 Stat., 323), which provides "That the title to the land, not exceeding 640 acres, now occupied as missionary stations among the Indian tribes of said Territory, together with the improvements thereon, be confirmed and established in the several religious societies to which said missionary stations respectively belong."

The plaintiffs claim that the defendant did not occupy this tract or

any portion of it as a missionary station or otherwise on August 14, 1848, or since September, 1847, and that therefore it was not within the purview of said proviso, and the patent to the defendant was wrongfully issued; and also that they are the owners of and entitled to the patent for certain portions of said tract, as hereinafter stated, and ask to have their several rights therein established and declared, and that the defendant be so far regarded as their trustee, and required to convey to them accordingly.

In 1852 the place called "The Dalles" was occupied as a town site for the purpose of business and trade, and has been so occupied ever since, and in 1855 the county of Wasco caused the same to be surveyed into lots, blocks, and streets, and said survey to be recorded; that on January 26, 1857, the plaintiff in 390—Dalles City—was made a municipal corporation with boundaries including said town site; and on April 18, 1860, entered at the proper land office, the fractional N. W. ¼ of said section 3, containing 112 acres, and including the land so occupied as a town site, under the town site law of May 23, 1844 (5 Stat., 667; 10 Stat., 306), in trust for the several use and benefit of the occupants thereof according to their respective interests, and now claims to be the owner thereof accordingly.

On November 1, 1853, Winsor D. Bigelow became a settler under the donation act upon 320 acres of the public land, including parts of the N. W. ¼ and the S. W. ¼ of said section 3, and now known upon the plats of the public surveys as donation claim No. 40, and resided upon and cultivated the same until February 16, 1860, and otherwise complied with the requirements of said act; that on December 9, 1862, said Bigelow conveyed an undivided ⅛ interest of a certain 27 acres of said donation to James K. Kelly and Aaron E. Wait, plaintiffs in No. 391; and on December 12, 1864, conveyed the remaining ⅞ of said 27 acres to Orlando Humason, who, on September 8, 1875, died testate, having devised the same to Phœbe Humason, his widow, and a plaintiff in No. 391, which 27 acres said plaintiffs, by reason of the premises, claim to own as tenants in common thereof.

On December 2, 1864, said Bigelow conveyed to said Kelly and Wait, the plaintiffs in No. 392, 46 town lots, within the limits of his said donation and situate in what is known as the "Bluff addition to Dalles City," which lots the plaintiffs in No. 392, by reason of the premises, claim to own as tenants in common thereof.

It is claimed by the defendant that in August, 1847, it agreed to turn over the missionary station at the Dalles with the improvements thereon to Dr. Marcus Whitman, the agent of the American Board of Commissioners for Foreign Missions, and then engaged as a lay missionary of said board, at a place called Wailatpu, about 140 miles E N. E. of the Dalles, upon the understanding that said board would maintain a mission there among the Indians, and that said Whitman would pay $600 for certain personal property belonging to the mission; that, in pursuance of said agreement, said Whitman gave the defendant a draft upon said board for said $600, and the defendant's agents and missionaries between September 1 and 10, 1847, surrendered the station to said Whitman; that owing to the death of said Whitman on
97 November 29, 1847, said agreement was canceled in 1849, by the surrender of said draft to the agent of said board and the "retransfer" of said station to the defendant, who thereupon resumed control of the same; that in June, 1850, the agent of the defendant went upon the ground and surveyed and marked the boundaries of the claim as he understood them to be, and that in 1854 the Rev. Thomas H.

Pearne, its agent, notified the surveyor-general of the Territory of the claim of the defendant thereto; but said defendant substantially admits that from the delivery of said station to Whitman, as aforesaid, it never actually occupied the same for mission purposes or otherwise, and claims that it was prevented from so doing by the danger from Indian hostilities, growing out of what is known as the Cayuse war.

The Commissioner of the General Land Office authorized the surveyor general to hear and determine the conflicting claims of the defendant, Bigelow and Dalles City, to the premises, and on February 16, 1860, the parties appeared before him, and on February 2, 1861, said officer decided that the defendant had no right to the land in controversy, which decision, on an appeal to the Commissioner, was, on February 7, 1863, affirmed. From there the case was carried by appeal before the Secretary of the Interior, who, on March 15, 1875, reversed said decision, and decided that the defendant was entitled to the premises as a mission station, and directed a patent to issue to it accordingly.

Section 2447 of the R. S., under which this patent issued to the defendant, is taken from the act of Dec. 22, 1854, authorizing the issue of patents in certain cases, and only applies where there has been a grant by statute without a provision for the issue of a patent. In such a case the section provides that a patent may issue for the grant "upon a survey thereof approved by the surveyor general," and "found correct by the Commissioner," subject, however, to the qualification that "such patent shall only operate as a relinquishment of title on the part of the United States, and shall in no manner interfere with any valid adverse right to the same land, nor be construed to preclude a legal investigation and decision by the proper judicial tribunal between adverse claimants to the same land."

The patent in question expressly declares that it is issued to the defendant subject to this qualification. There is, then, no question in this case of the power of this court to investigate the grounds upon which this patent was issued, and to determine that they were insufficient, or otherwise, either in law or fact, and decree accordingly. The patent and the subsequent action of the parties has had the effect to remit the case to this forum to try and determine to whom the patent should have issued for the portions of the tract claimed by the plaintiffs.

It is admitted that the plaintiffs are entitled to the patent for the portions claimed by them, unless the defendant was entitled to the tract as a mission station under § 1 of the act of August 14, 1848.

On April 30, 1853, the defendant, by its agent, Rev. Thomas H. Pearne, notified the land department of its claim to a mission station, near Salem, in Marion County, the same being parts of sections 23 and 26, in T. 7 S. of R. 3 W. of the Wallamet meridian, and containing 97.39 acres, which claim was allowed.

And now, the plaintiffs contend that under the act a religious society can only receive a grant of one mission station, and the defendant having elected to take the station at Salem, is therefore barred from claiming the one at the Dalles.

I do not think this is the most reasonable construction of the statute. It grants the land "occupied as missionary stations" to the several religious societies to which said stations respectively belong. It is true that this language would be satisfied with the grant of one station to each society; but it is broad enough, in my judgment, to cover more, if more there were, and ought to have effect accordingly, unless there is some controlling reason to the contrary in the circumstances of the case. If it had been the intention of Congress to limit the grant to

one station to each society, such intention would have been more naturally expressed by saying, "The land occupied as a missionary station to each religious society to which such station belongs;" and this construction is strengthened, rather than otherwise, by reference to the surrounding circumstances. For some years prior to the passage of the act of August 14, 1848, there were three religious societies engaged in missionary labors among the Indians in Oregon: the Methodist Episcopal, the Presbyterian, and the Roman Catholic. The first missionaries of the former came to Oregon with Wyeth, in 1834, and established a mission at Wallamet, below Salem, which was afterwards removed to the latter place. Subsequently, their numbers were increased, and they established missions at The Dalles, Nesqually, and Clatsop. The Presbyterian missionaries came to the country under the auspices of the American Board in 1836, and established a mission at Wailatpu, near what is now called Walla Walla, with Marcus Whitman at its head. Afterwards they established missions at Lapwai and Spokan, all east of the Cascade Mountains. The Roman Catholic missionaries came from Canada with the Hudson Bay train, in 1838. They established the mission St. Paul in the Wallamet, near Champoeg, and Cowlitz, on the Cowlitz River. Later they established missions in Eastern Oregon, and held occasional missionary services among the Indians at many points in the country. In June, 1848, they established a mission at The Dalles, to the west, and adjoining the land in controversy.

The country in which these grants were made was an immense territory, extending from the 42d to the 49th parallel of north latitude, and reaching from the Rocky Mountains to the Pacific Ocean. Outside of these missions and the Hudson Bay posts, practically, it was unoccupied, except sparsely, in the Wallamet Valley. The missionaries were very properly regarded as having promoted the settlement and civilization of the country, and there was no reason why, if Congress saw proper to recognize their services, either as settlers or missionaries, by granting them the land occupied by them as mission stations it should confine the grant to one station to each society, when more were occupied by it.

It is also insisted that this patent is void, as not having been issued upon "a plat of survey thereof," approved by the surveyor general, but upon the survey made by the agent of the mission, in June, 1850. I think it is plain that a patent issued upon a survey or diagram not approved by the surveyor general would be void. For instance, a patent could not lawfully issue upon the survey of the claim by the society itself, because a survey of the grant involved the question of how much land was occupied by the mission, and within what limits. To allow the society to do this would be to make it a judge in its own case.

The grant was only of the land occupied, which might be less than 640 acres, and the surveyor general was required to ascertain the quantity and its boundaries before he could approve a survey thereof to enable the department to issue a patent therefor.

When the surveyor general was authorized to hear the contest between these parties on February 23, 1860, he directed a deputy surveyor to make a survey of the premises: (1) as claimed by the society; (2) as actually occupied by it; and (3) so as to include its improvements with 640 acres south of the bluff, in substantially a square form. Plats of these surveys, the second one containing 87 acres, were forwarded to the Commissioner by the surveyor general with his decision that the society was not entitled to any portion of the premises as a missionary station. Neither of these "plats of survey" were approved by the surveyor gen-

eral in the sense of the statute, because they were each made up on a hypothesis that the society occupied the premises, or some portion of them, as a mission station on August 14, 1848, which he at the same time found not to be true.

But on March 29, 1875, and after the decision of the Secretary of the Interior, the Commissioner wrote to the surveyor general, advising him of such decision, and directing him to furnish that office with a "certified diagram of the claim of said society," as confirmed by the same. In obedience to this direction the surveyor general, on June 17, 1875, certified to the Commissioner a diagram of the first of the three surveys, as being a plat of the survey of the Methodist mission claim at The Dalles, and upon this the patent was issued, as appears therefrom.

Whatever, then, may be thought of the correctness of the survey, the proposition that the patent was issued without a plat of survey approved by the surveyor general, in the face of these facts, is not tenable.

98 It is also contended by the plaintiffs, that if the defendant is entitled to take under the act as a missionary society at all, the grant should be confined to the land actually occupied by it.

This grant, unlike the one made by the donation act, is not of the 640 acres occupied by the donee, but of the quantity occupied, not exceeding that number of acres. Still it could not have been the intention of Congress in the one case more than the other that the occupation of a donee should be limited to his actual enclosure and tillage. The donation act of September 27, 1850 (9 Stat., 497), was in this respect a sort of supplement to the act of August 14, 1848, and did for the settlers at large what the former had done for the missionaries. It gave to the settler then residing in the territory, for himself and wife, the section of land which he had resided upon and cultivated for four consecutive years. But this residence and cultivation was not required to include the whole section. In fact the actual enclosure and cultivation was often confined to a very few acres; while the remaining portion was only occupied for grazing, and sometimes hardly that.

Very early in the settlement of this country it became a cardinal rule that a settlement on the public lands should not include any more than a section. This was probably suggested by the terms of the Oregon bill introduced into the Senate by Dr. Linn, of Missouri, in 1842, which, among other things, proposed to give 640 acres of land to each white male inhabitant of the territory over 18 years of age. Prior to this time the missionaries had claimed large areas at their several stations, but as generally there was no one to dispute such claim, it mattered little one way or the other. In December, 1843, the mission at Salem was surveyed and platted at 16 sections. But on July 5, 1843, the people adopted a land law which limited the extent of a claim or settlement to 640 acres, with a proviso, that any mission "of religious character" established before that time might contain six miles square. (Or. Laws, 1874, p. 50 n.)

Under these circumstances I think the grant to the missionary societies ought to be construed to include 640 acres at each mission station occupied by them—that is, claimed and used by them according to the circumstances of the time and place, and not in the actual occupation of any one else.

In the case under consideration there does not appear to have been any survey or marking on the ground of the boundaries or limits of the claim until June, 1850. But it was doubtless well understood by the occupants and the Indians, that it should extend a certain distance in cer-

tain directions, or that it should include certain points or places—as the improvements, the mill site, etc.; though I do not think that it was ever expected or intended that it should extend north of the bluff, between which and the river—a distance of about half a mile—were the villages and camping ground of the Indians and voyageurs up and down the Columbia River.

And this brings me to the consideration of the question whether upon the evidence the defendant occupied this mission station so as to be entitled to the grant thereof under the act of August 14, 1848.

The evidence is somewhat meagre and upon some points contradictory. It consists largely of the testimony of persons deeply in sympathy with the defendant, to facts and circumstances occurring thirty years ago, and scattered over a considerable period of time. The correspondence between the defendant and its agents here concerning the occupation and transfer of this station is not produced. It is presumed to have been in writing and within the knowledge and control of the defendant, and therefore the omission to produce it is a matter which must have more or less weight against the defendant, according to the circumstances of the case. Portions of the evidence partake of the character of hearsay, and some of it is decidedly argumentative. In considering it it will be impossible to ignore the history of the period and place to which it relates. Reading it, then, by this light, and where it is contradictory or obscure, supplementing it from this source, the material facts about the settlement and occupation of the mission station at the Dalles are these:

In the spring of 1838 the Rev. Daniel Lee and Rev. H. K. W. Perkins, under the direction of the Rev. Jason Lee, the superintendent of the defendant in Oregon, established a mission station within the limits of the tract described in the patent herein, at a place then called Wascopam. In the fall of the same year it was stocked with cattle from the Wallamet Valley. The place was favorably situated for trade and intercourse with the Indians and immigrants from the east—the latter usually, at this point, exchanging their wagons for boats and often bartering their poor oxen for supplies—such as fresh beef and the like.

In 1840 Mr. H. B. Brewer went to reside there as a farmer for the mission. Perkins and Lee left the mission for the east in 1844, and the Rev. A. F. Waller joined it about the same time. Waller and Brewer remained there until the transfer of the station to Whitman in 1847. In 1844 the Rev. George Gary superseded Jason Lee as superintendent of the Oregon mission. Apparently the society had become dissatisfied with the secular character and cost of the missionary operations, and sent Gary here to bring about a change in this respect. To this end, soon after his arrival in the territory, the various mission stations, except the Dalles, and all the mission property, consisting mainly of large herds of horses and cattle, were disposed of to members of the mission; so that after 1844 the defendant had no "mission among the Indian tribes" in Oregon except at the Dalles. Thereafter the labors of its faithful clerical missionaries, of whom but a few remained in the country, were devoted to the growing "white settlements" in the Wallamet Valley. In the language of one of them—"The finances of the Oregon mission were thus summarily brought to a close, and the mission was not only relieved of a ponderous load, but assumed a decidedly spiritual character." (Hines' Oregon, 242.)

In July, 1847, Mr. Gary was succeeded as superintendent of the mission by the Rev. William Roberts. Prior to this, and in the spring of that year, Mr. Gary had disposed of nearly all the live stock of the

Dalles mission station and was negotiating with Dr. Whitman for the transfer of the station itself. Mr. Roberts, in continuation of the policy, manifested by his predecessor, followed up these negotiations until in August an agreement was made for the abandonment and transfer of the station to Whitman, together with the sale of a canoe, some farming utensils, grain and household furniture, for the sum of $600; and between September 1 and 10, 1847, Messrs. Waller and Brewer, the agents of the defendant, delivered the possession of the premises to Whitman, who took actual possession thereof and placed his nephew—Perrin B. Whitman, a youth of 17 years—in charge, while he proceeded to his mission station at Wailatpu.

Dr. Whitman was not a minister, but at the time of the transfer of this station to him it was understood and expected that religious services and instruction would be in some way kept up there for the benefit of the Indians; but there was no legal obligation to that effect; nor did the defendant or its agents have any intention or expectation of returning or occupying the station if such services and instruction was not furnished or otherwise. In pursuance of the settled policy of the defendant, the station was absolutely and unqualifiedly abandoned to Dr. Whitman without any reservation or right to resume the possession under any circumstances.

Dr. Whitman, whatever his purpose may have been in regard to the Indians, purchased the station primarily for himself and nephew, Perrin B., to whom he promised the west half of it if he would remain and take care of it until the spring, when the former intended to return there and make it his permanent home.

At the time the defendant abandoned this station there was about 70 acres under some kind of enclosure, about one-half of which had been under cultivation. There were 6 moderate-sized buildings upon the premises—a dwelling, meeting, school and store house, barn and workshop, built of logs, except the dwelling, which was a frame filled in with adobe. The buildings were plain and constructed mostly with Indian labor, and did not cost to exceed $4,000, at which valuation they were afterwards—on June 16, 1860—paid for by the United States upon the claim and estimate of the defendant to that effect. (See H. of R. Rep. No. 145, 2 Ses. 35 Cong.; 12 Stat., 44.)

On November 29, 1847, Dr. Whitman and others were murdered at Wailatpu, by the Indians of that station, and this was followed by what is known as the Cayuse war, in which the people of Oregon under the provisional government undertook to chastise the Cayuse Indians for this massacre. By midsummer of 1848, hostilities had ceased and peace was established; and in the letter part of the summer the troops were withdrawn from the country and returned to their homes.

About December 16, Perrin B. Whitman, who had remained in charge of the station at the Dalles, being apprehensive of danger, left for the Wallamet Valley, taking with him Mr. Alanson Hinman, whom his
99 uncle had sent there from Wailaptu in October as a farmer and housekeeper. A detachment of volunteers soon after occupied the premises with the permission of said Whitman, and it remained in the possession of the troops of the provisional government until they were withdrawn from the country as stated. Thereafter the premises remained unoccupied, except occasionally by passing travelers and immigrants, until the spring of 1850, when a military post was established there by the United States and the premises included in a military reserve.

There never were any Indian hostilities at the Dalles or within 100

miles of the place. The immigrations of 1848 and 1849 came through the country without molestation; and from early in 1848 there was no more danger of Indian difficulties or hostilities at the Dalles, than there was prior to September, 1847.

In the spring of 1849 the news of the passage of the organic act with the clause making a grant to missions, reached Oregon. The death of Whitman had prevented the occupation of the station at the Dalles by him, either for himself or as the agent of the American board, or both. The draft of $600 which he had given upon the board in payment for it, had never been presented. Whatever might be thought of the claim of the defendant there could be no ground for claiming the premises as a place ever occupied by the American board as a mission station. Thereupon, about the last of February or first of March, 1849, an arrangement was made between the superintendent of the Oregon mission and Messrs. Elkanah Walker, Henry H. Spaulding, and Cushing Eells, three missionaries of the American board, by which the station was retransferred to the defendant and the draft aforesaid canceled; and this was done by the defendant, not with any view of resuming missionary work there among the Indians or otherwise, but solely to enable it to claim and obtain, if it could, a grant of the premises from the United States on account of its occupation prior to September, 1847, and the subsequent circumstances. To the same end and to assist it in obtaining damages from the United States for taking a portion of the station as a military reservation, the defendant, on February 28, 1859, obtained from the American board a formal deed of quitclaim to the premises; although on November 3, 1858, Messrs. Walker and Eells, professing to act upon a power to them from said board dated February 28, 1852, for a nominal consideration, had conveyed the premises, subject to the military reservation, to Messrs. M. M. McCarver and Samuel L. White.

Upon this state of facts there is no ground to claim that the defendant acquired the title to this station on August 14, 1848, under the act of that date. It had abandoned the place voluntarily and without any expectation or intention of returning, and was no more within the purview or operation of the act than if it had never been upon the ground. The grant only applies to such stations as were occupied on August 14, 1848. To occupy is to possess—not constructively but actually. The word is of a more limited signification than possession. It is derived from ob and capio—to lay hold of—and means to possess by having hold of or being actually upon the thing possessed, continuously and exclusively. Therefore, there can be no such th ng as constructive occupancy. But when one has the complete legal title to land and is therefore entitled to the possession of the same in law, he is deemed to have it. (U. S. v. Arredondo, 6 Pet., 743.) But prior to August 14, 1848, there could be no such possession of lands in Oregon, because the legal title was in the United States. Occupancy or actual possession was the only interest any one then had in lands in Oregon, and when that was given up or abandoned the relation of the party to the land was absolutely terminated, and it was open to occupation by the next comer as though the foot of man had never been upon it. (Lownsdale v. City of Portland, 1 Deady, 1.)

Prior to August 14, 1848, the only interest which the defendant had in the premises was that of occupancy or actual possession. It therefore could have no constructive possession of the land. If this actual possession or occupancy existed at the passage of the act making the grant, the title of the United States was then and thereby and on that account vested in the defendant, but not otherwise. The act makes the grant

to take effect not upon an occupation which preceded or followed it, but upon that which was contemporaneous with it. The grant was made upon the condition precedent that the defendant was then in the occupation of the premises. Intention or desire to occupy is of no avail; and for the want of this occupation there is no excuse or equivalent. Even taking the view of the matter sought to be maintained by the defendant, that it was prevented from occupying the premises on August 14, 1848, by Indian hostilities, still the case clearly falls within the ruling in Ford v. Kennedy, 1 Or., 166, in which it was held that the grant in §4 of the donation act of 640 acres of land to married persons who had resided upon the same for 4 years prior thereto, or to their heirs in case of their death before the patent issued, did not include the heirs of married persons who had died before the passage of the act, because by the terms thereof, the grant was limited to persons residing in the territory at the time of its passage—then in being. So in this case the grant only applies to stations then occupied for missionary purposes, and if for any reason a station was not then so occupied it is not within the purview of the act—it matters not how long or how effectively missionary operations had been carried on there at some former period. The station at Wailatpu would in all probability have been occupied by the Presbyterian society on August 14, 1848, but for the massacre of the missionaries there on November 29, 1847. But this fact did not excuse or was not equivalent to such occupation. Therefore, in the passage of the act to organize Washington Territory, passed March 2, 1853, when Congress had this subject before them with reference to the missionary stations in the proposed territory, the grant was repeated in the terms of the Oregon act with the addition of the words, "or that may have been so occupied as missionary stations prior to the passage of the act establishing the territorial government of Oregon." This change was manifestly made to meet the case of the Wailatpu mission, which was not occupied as a mission station on August 14, 1848, and upon the theory that for want of such occupancy it was not granted by the Oregon act to the society which Dr. Whitman represented during his residence upon it, prior and up to the time of his death. But such want of occupancy being neither the result of a voluntary abandonment or a fleeing like the hireling from the wolf, but of the death of the faithful occupant at his post by Indian treachery and violence, Congress was induced to extend the terms of the grant so as to include that case.

But as has been shown, there is not the slighest ground for saying that the Dalles station was abandoned by the defendant's missionaries on account of fear of the Indians or that such cause prevented its occupation by them in August, 1848. On the contrary they deliberately abandoned it without any intention of returning because of a change of policy on the part of the society, and if the act of 1848 had not contained the clause making grants of mission stations as it did, it is morally certain that we would never have heard of this manifest afterthought; that Whitman was to keep up the missionary work at The Dalles, in some sense as the representative of and for the defendant, and that upon his death the station would have been reoccupied and held by it as a mission but for fear of the Indians.

But it is urged that Congress has recognized the validity of the defendant's claim to this land by the passage of the act of June 16, 1860, (12 Stat., 44), "for the relief of the Missionary Society of the Methodist Episcopal Church," which provided, that there should be paid to said society "the sum of $20,000, upon filing in the proper department a release to the United States, to be approved by the Attorney-General, of

all claim to the land embraced within the limits of the military reservation at the Dalles, in Oregon Territory, and of all claim for damages for destruction of property on or near the said land by the United States troops, or volunteers, or Indians at any time anterior to the date of said release."

To fully comprehend the motive and scope of this act it is necessary to state that in 1854, the military reservation at the Dalles, which had covered a number of square miles, was, by an order from the War Department, reduced to 640 acres, to be laid off in such a manner as least to interfere with private rights. In the execution of this order only 353 acres of the mission station, as surveyed in 1850 by the defendant, including all the improvements thereon, were embraced in the reservation. The society at once asked for compensation. The matter was referred by the department to Maj. G. J. Raines, then the post commander at The Dalles, who reported in favor of paying the society the sum of $20,000. On January 28, 1859, the House Committee on Military Affairs also recommended such payment, which was to be in full satisfaction of the claim for the land and also one for $4,000 for the destruction of property upon the claim. The committee state in their report that it appears from the evidence that the society was in the "possession" of the land on August 14, 1848, and that as soon as the danger from Indians hostilities admitted, it endeavored to "reoccupy" the premises, but the United States "troops had ere then taken possession" and included them in the military reservation.

100 The committee seem to have avoided saying that the society was in the occupation of the premises on August 14, 1848, but chose the more indefinite and convenient term "possession." In passing the bill, however, Congress made no declaration on the subject.

This is one of the matters alleged in the answer, which was excepted to as impertinent.

So far as these suits are concerned, it only amounts to this: Upon the ex parte representations of the defendant, Congress was induced to pay $20,000 in satisfaction of its claim for one half of the premises, and the value of the improvements thereon, whether destroyed by the volunteers under the provisional government, the Indians, or the United States troops, and estimated by it at $4,000.

As has been stated, no reasons were given by Congress for the passage of the act, but in fact various ones may have and probably did influence the action of members in favor of the appropriation.

Probably the strongest consideration in its favor was the fact that, although the defendant might not have been in the occupation of the station in August, 1848, still it had maintained a mission there for 9 years prior to September, 1847, during a portion of which time the title to the country was in dispute, and therefore there was a strong equity in favor of its receiving some compensation, in either land or money. Again, the very fact that the defendant is the representative of a popular and powerful religious organization, to whose good will and favor the average Congressman in Oregon and elsewhere has a lively regard, may not have been without its effect on the result.

But be this as it may, the action of Congress in making provision for the payment of this claim cannot, under the circumstances, have the effect to invest the defendant with the title to the premises. In legal effect all that was done amounted only to a release by the defendant of its right, if any, to the one-half of the claim occupied by the military and for damages for the loss or destruction of property, which is not even an admission by the United States to whom the release was made

that the releasor, the defendant, ever had any right to either, but only that it asserted some kind of claim thereto which it was deemed expedient to satisfy and extinguish. (Bright v. Rochester, 7 Whea., 548; Watkins v. Holman, 15 Pet., 53; Croxall v. Shered, 5 Wal., 287; Merryman v. Bourne, 9 Wal., 600.)

Besides this, one of the plaintiffs, and Bigelow, under whom the others' claim had already acquired rights in the premises under the town site and donation acts, which Congress could not deprive them of, even if they had been parties to this proceeding which resulted in the payment to the defendant. Congress has the power to dispose of the public lands and to make compensation for private property taken for public uses, but it has not judicial power, and therefore cannot finally determine conflicting claims to land, although arising under its own grants or laws.

But since this payment to the defendant of $20,000 there is no longer any cause for regarding it as even morally entitled to anything from the public on account of its missionary operations at the Dalles. In 1847, when the place was abandoned by the defendant, it had no market value, because, there being no white people east of the Cascade Mountains except the Presbyterian and Roman Catholic missionaries, there were no other purchasers for it; and rather than let it fall into the hands of the latter it was disposed of to Dr. Whitman for $600. And it appears that he was induced to make the purchase, even at that figure, as much to prevent the "priests" from getting hold of the position as anything else. In 1850, when the claim was taken by the military, it probably could not have been sold with a good title for $1,000, and even as late as 1854–'5, when the town had commenced to grow, the sum paid the defendant by the United States for the one-half of it was more than double the value of the whole of it.

The conclusion of the court is that the defendant did not occupy the premises on August 14, 1848, as a missionary station or otherwise, either by itself or the American board, and that it was not deterred from so doing by the danger from Indian hostilities, but voluntarily abandoned the same before September 10, 1847, without any intention or expectation of reoccupying it under any circumstances, and therefore the patent therefor to the defendant was wrongfully issued; and the decree of the court will be that the defendant be declared a trustee for the several plaintiffs herein for so much of the premises described in the patent as is claimed by them in their several suits, and that the defendant, within 90 days, by a sufficient conveyance or conveyances, containing proper covenants against its own acts, to be approved by the master of this court, release to the said plaintiffs accordingly all right and title to said premises, and that it pay the plaintiffs their costs and expenses of suit.

MATTHEW P. DEADY,
U. S. District Judge, Oregon.

James K. Kelly and A. N. Gates for plaintiffs; Rufus Mallory and John C. Cartwright for the defendant.

(Endorsed:) Filed December 3, 1879. R. H. Lamson, clerk.

101 COMPLAINANT'S TESTIMONY.

102 (Copy.)

No. .] LAND OFFICE AT OREGON CITY,
April 19, 1860.

We, the board of trustees of Dalles City, Wasco County, in the State

of Oregon, do hereby apply to purchase the northwest fractional quarter of section three (3), in township one (1), of range thirteen (13), containing acres, according to the returns of the surveyor-general, for which we have agreed with the register to give at the rate of one dollar and twenty-five cents per acre, in trust for the several use and benefit of the occupants thereof, according to their respective interest, according to act of Congress of 23d May, 1844.

(Signed N. H. GATES,
Attorney for the Board of Trustees of Dalles City.

I, , register of the land office at , do hereby certify that the lot above described contains acres, as mentioned above, and that the price agreed upon is one dollar and twenty-five cents per acre.

Register.

(Endorsed:)

LAND OFFICE, *Oregon City, June* 9, 1865.

I certify that I have carefully compared the within with the original on file in this office, and find it to be a correct transcript thereof, and of the whole of said origina.

OWEN WADE,
Register of the Land Office aforesaid.

103 RECEIVER'S OFFICE,
Oregon City, Oregon, April 11, 1867.

I hereby certify that there is one hundred and forty dollars on deposit in this office for the purchase of the town site of Dalles City, Oregon, deposited by N. H. Gates, att'y for Dalles City, as appears by the books of this office.

HENRY WARREN,
Receiver.

(Endorsed:) Dalles City. Certificate of entry & rect.

104 B. W. O. R. B. K.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
November 11th, 1875.

I, W. W. Curtis, Acting Commissioner of the General Land Office, do hereby certify that the annexed on pages numbered one to seven, inclusive, true and literal exemplification of the original patent in favor of the Missionary Society of the Methodist Episcopal Church, as it appears of record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL OF THE GENERAL LAND OFFICE.] W. W. CURTIS,
Acting Commissioner of General Land Office.

105 (1.)

The United States of America to all to whom these presents shall come, greeting:

Whereas, by the act of Congress, approved August 14, A. D. 1848, entitled "An act to establish the territorial government of Oregon," it

is provided, "That the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said territory, together with the improvements thereon, be confirmed and established in the several religious societies to which said missionary stations respectively belong;"

And whereas it appears that under and by virtue of the act aforesaid the Missionary Society of the Methodist Episcopal Church claims title to a certain tract of land in the State of Oregon;

And whereas, by the act of Congress, approved June 16, 1860, entitled "An act for the relief of the Missionary Society of the Methodist Episcopal Church," it is enacted, "That there shall be paid out of any money in the Treasury not otherwise appropriated, to the Missionary Society of the Methodst Episcopal Church, the sum of twenty thousand dollars, upon filing in the proper department a release to the United States, to be approved by the Attorney-General, of all claim to the
106 land embraced within the limits of the military reservation at the Dalles, in Oregon Territory."

And whereas it appears by a report dated November fifth, A. D. eighteen hundred and sixty-six, from the Secretary of War to the Secretary of the Interior, on file in the General Land Office, accompanied by a transcript of relinquishment made by direction of the aforesaid Missionary Society of the Methodist Episcopal Church, that said society on the nineteenth day of July, A. D. eighteen hundred and sixty, did, pursuant to the provisions of the aforesaid act of Congress of June 16, A. D. (2) 1860, remise, release, and forever quitclaim, unto the United States of America, all the lands embraced within the limits of the military reservation at the Dalles, in the State of Oregon; the said land thus remised, released, and quit-claimed being more particularly described in the map annexed to the said deed of relinquishment and made a part thereof, which said map is in the words and figures as follows, to wit:

(Here follows map marked page 107.)

108 (3.)

And whereas the Secretary of the Interior, by decision dated March fifteenth, A. D. eighteen hundred and seventy five, decided that the said Missionary Society of the Methodist Episcopal Church was "a duly organized corporation under the laws of New York," and is entitled under the provisions of the aforesaid acts of Congress "to the land included in the survey of June, 1850, as shown on map 1, less the three hundred and fifty-three and a fraction acres, included in the military reserve paid for by Congress."

And whereas the said map one, and the field notes of survey accompanying the said map one, as transmited to the General Land Office by the United States surveyor-general for Oregon, are in the words and figures as follows, to wit:

(Here follows map marked page 109.)

110 (4.)

Field notes of the survey of the Methodist missionary claim, containing 643.37 acres. There being in secs. 33 & 34, T. 2 N., R. 13 E., 68.19 acres; and in secs. 3 & 4, T. 1 N., R. 13 E., 575.18 acres.

Beginning at the N. E. corner of the claim in section 3, T. 1 N., R. 13 E., and on the left bank of Columbia River, where set temporary post:

	Thence—
South	Along the east boundary of the claim. Var. 22° 00 east.
8.90	To the N. W. corner of claim 38.
	Thence—
S. 38½° E.	On an offset line 14.00 chs.; thence east at 7.52 chs.; regained line 20.71 chs., south of the corner.
27.90	Intersect school-house at N. W. corner.
28.90	Commence to ascend bluff S. E. & W.
63.27	Set temporary post in sec. 3, for S. E. corner.
	Thence—
West	Along the south boundary. Var. 20° 15′ east.
30.42	Intersect line between secs. 3 & 4 7.78 chs., north of corner to secs. 3, 4, 9, & 10.
77.00	A road to garrison N. 25° E. & S. E.
80.00	Set temporary post in sec. 4 for the S. W. corner of the claim.
	Thence—
111 North	Along the west boundary. Var. 21° 45′ east.
39.00	To Mill Creek 25 lks., wide course N. 25° E.
74.15	Intersect township line between townships 1 & 2 north, range 13 east, 250 lks.; west of ¼ sec. post on the south boundary of sec. 33, T. 2 N., R. 13 east.
87.00	Set temporary post in sec. 33 for N. W. cor. of the claim.

(5.)

	Thence—
East	On north boundary. Var. 21° 00′ east.
42.64	Intersect line between secs. 33 & 34, 160 lks. south of the corner to fractional secs. 33 & 34.
45.19	Set temporary post on the left bank of the Columbia River, in sec. 34, for angle of the claim.
	Thence with the meanders of the left bank up-stream, as follows, in sec. 34:
S. 47° E.	14.58.
S. 38° E.	4.00 to cor. to fractional secs. 3 & 34, on township line between "1 & 2" north.
	Thence in sec. 3, T. 1 N., R. 13 E.
S. 38½ E.	6.90.
S. 70 E.	8.78.
S. 76½ E.	9.20 to the place of beginning.

And whereas a special plat, dated June seventeenth, A. D.

111½ eighteen hundred and seventy-five, by the United States surveyor-general for Oregon, has been filed in the General Land Office of the United States, which special plat is certified by the said surveyor-general to be a correct plat of "that portion of the Methodist mission claim lying outside the exterior lines of Maj. Rain's military reservation at Dalles City, Oregon," which said special plat is in the words and figures as follows, to wit:

(Here follows diagram marked page 112.)

113 (6.)

Now, know ye, That the United States of America, in consideration of the premises, and pursuant to the provisions of section two thousand four hundred and forty-seven, chapter eleven, title thirty-two of the Revised Statutes of the United States, have given and granted, and by these presents do give and grant unto the said Missionary Society of the Methodist Episcopal Church, and to its successors and assigns, the land embraced and described in the aforesaid special plat certified June seventeenth, A. D. eighteen hundred and seventy-five, as aforesaid, by the United States surveyor-general as aforesaid, and represented thereon as belonging to the said missionary society, and outside the military reservation as aforesaid, provided that all and every part thereof of the land included in the military reservation relinquished to the United States June 16, 1860, as aforesaid, is and shall be excluded and reserved from the transfer by these presents; to have and to hold the said tract of land, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, subject to the proviso aforesaid, unto the said Missionary Society of the Methodist Episcopal Church, and to its successors and assigns, forever, with the
114 provision enacted in said section two thousand four hundred and forty-seven, chapter eleven, title thirty-two, Revised Statutes of the United States, that this patent "shall only operate as a relinquishment of title on the part of the United States, and shall in no manner interfere with any valid adverse right to the same land, nor be construed to preclude a legal investigation and decision by the proper judicial tribunal between adverse claimants to the same land."

(7.)

In testimony whereof I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this ninth day of July, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the one hundredth.

By the President—

[L. S.]

U. S. GRANT,
By S. D. WILLIAMSON,
Secretary.

L. K. LIPPINCOTT,
Recorder of the General Land Office.

115 Before L. L. McArthur, judge of the circuit court of the State of Oregon for Wasco County.

In the matter of the application of Dalles City, a municipal corporation, for the perpetuation of the testimony of William Helm, Cushing Eels, Perrin B. Whitman, and A. M. A. Blanchet.

To the Hon. L. L. McArthur, judge of the circuit court of the State of Oregon for the county of Wasco.

The Dalles City, a municipal corporation duly incorporated under the laws of the State of Oregon by act of the legislative assembly, approved October 24th, 1868, your applicant and petitioner would respectfully show—

That your applicant and petitioner expects to be a party prosecuting an action or suit, if commenced by said Dalles City against the Missionary Society of the Methodist Episcopal Church Company, a private corporation doing business under the firm-name of the Missionary Society of the Methodist Episcopal Church, and having its office and principal place of business in the city of New York, in the State of New York, or if commenced by said Missionary Society of the Methodist Episcopal Church, or its assigns, against said Dalles City, the *the* said Dalles City expects to be a party defending in such action or suit in a court in the State of Oregon, and that the said Dalles City has an interest
116 in real property lying and situated within the corporate limits of said Dalles City, Wasco County, State of Oregon, and being a part of that certain tract, lot, or parcel of land claimed by the said Missionary Society of the Methodist Episcopal Church, and known as the Dalles Mission.

That the right to said real property will be the subject matter of controversy between your applicant (either upon the prosecution or defense) and the Missionary Society of the Methodist Episcopal Church Company.

That your applicant has no knowledge or information as to the names and residence of the members of the board of directors of the Missionary Society of the Methodist Episcopal Church Company other than they are a private corporation, and having its office and principal place of business in the city of New York, State of New York, and that it is a resident of the State of Oregon.

That the testimony of William Helm, who resides at Dallas City, Wasco County, Oregon; Perrin B. Whitman, residing at or near Lapwa Indian Agency, in Idaho Territory; Cushing Eels, residing at Snohomish County, in Washington Territory; and A. M. A. Blanchet, residing at Vancouver, Clark County, Washington Territory, will be material to your applicant either upon the prosecution or defense of said possible action or suit.

117 That the facts expected to be proved by said witnesses are that the said Missionary Society of the Methodist Episcopal Church did not, on the 14th day of August, A. D. 1848, occupy nor had it occupied as a missionary station any of the tract lying within the corporate limits of Dalles City for a period of about eleven months prior to the date last aforesaid.

That about the month of September, 1847, said Missionary Society of the Methodist Episcopal Church voluntarily abandoned said Dalles mission, and has not since said last named date occupied or had possession of any part thereof, or any other missionary society.

That the tract of land which will be the subject matter of controversy between said adverse claimants has been and now is occupied by the citizens of Dalles City.

That the witnesses aforesaid are *are* aged persons with declining health; that unless their testimony be perpetuated it is liable to be lost to your applicant altogether.

Wherefore your applicant, the Dalles City, respectfully prays that an order for the examination of said witnesses be made to take their testimony before your hon. or before some suitable and qualified person by your order named, and that your hon. fix by order the time and place when and where such examination shall be had. And, further,
118 that your honor designate some newspaper of general circulation and in what manner and for how long such order and notice shall be published in such designated newspaper.

Dated Aug. 4th, 1877.

GATES AND WHITTEN,
Att'ys for Applicants.

STATE OF OREGON,
County of Wasco, ss:

I, N. H. Gates, being first duly sworn, on oath say I am mayor of Dalles City, and that the facts set forth in the foregoing application are true, as I verily believe.

N. H. GATES.

Subscribed and sworn to before me this 4th day of August, 1877.

R. F. GIBONS,
County Clerk.

(Endorsed:) In the matter of the application of Dalles City for the perpetuation of the testimony of Wm. Helm, Cushing Eels, P. B. Whitman, & A. M. A. Blanchet. Filed August 7th, A. D. 1877. R. F. Gibons, clerk.

119 In the circuit court of the State of Oregon for Wasco County.

In the matter of the application of Dalles City, a municipal corporation, for the perpetuation of the testimony of William Helms, Cushing Eels, Perrin B. Whitman, and A. M. A. Blanchet.

Based upon a proper application and petition to me this day duly made and presented, it is hereby ordered that the deposition of William Helm, Cushing Eels, Perrin B. Whitman, and A. M. A. Blanchet be taken by R. F. Gibons, county clerk of Wasco County, Oregon, and ex-officio clerk of the circuit court of the State of Oregon for the county of Wasco, at the court-house in The Dalles, Oregon, commencing on Monday, the twenty-fourth day of September, 1877; and it is hereby ordered that notice of the taking of the depositions of the said William Helm, Cushing Eels, Perrin B. Whitman, and A. M. A. Blanchet be served upon the Missionary Society of the Methodist Episcopal Church, by publication, once a week for six consecutive weeks, commencing on the eleventh day of August, 1877, in "The Weekly Mountaineer," a weekly newspaper published at The Dalles, Wasco County, Oregon; that the notice published be directed to the Missionary Society of the Methodist Episcopal Church, requiring the said society to attend at the time and place and before the officer hereinabove specified and named in
120 order to cross-examine the said witnesses.

And it is further ordered that during the publication of this order and the said notice as aforesaid, the publisher of the said newspaper deposit in the post office at The Dalles, Wasco County, Oregon, a copy of said newspaper carefully wrapped, postage fully prepaid, and directed to the said society at its office in New York City, State of New Yo

And it is further ordered that the petitioner cause a certified copy of the petition and of this order to be deposited in the post-office, at the place aforesaid, postage fully prepaid, and directed to the said society at its office in New York City, State of New York.

Done and dated this 7th day of August, 1877, at The Dalles, Wasco County, Oregon.

L. L. McARTHUR,
Judge.

(Endorsed:) In the matter of the application of Dalles City, for the perpetuation of the testimony of W. Helm, C. Eels, P. B. Whitman, and A. M. A. Blanchet. Filed August 7th, A. D. 1877. R. F. Gibon, clerk.

121 In the matter of the application of The Dalles City, a municipal corporation, for the perpetuation of the testimony of William Helm, Cushing Eels, Perrin B. Whitman, and A. M. A. Blanchet.

To the Missionary Society of the Methodist Episcopal Church, a private corporation.

You will take notice that in pursuance of an order herewith published, made on the 7th day of August, 1877, by the Hon. L. L. McArthur, judge of the circuit court of the State of Oregon for the county of Wasco, to take and perpetuate the testimony of William Helm, Cushing Eels, Perrin B. Whitman, and A. M. A. Blanchet, material witnesses for applicant and petitioner in a possible controversy that may arise between The Dalles City, a municipal corporation, and the Missionary Society of the Methodist Episcopal Church, will be taken before R. F. Gibon, county clerk of Wasco County, Oregon, and ex-officio clerk of the circuit court of the State of Oregon for the county of Wasco, at the court-house in Dalles City, Wasco County, Oregon, commencing at 10 o'clock a. m. on Monday, the twenty-fourth day of September, 1877.

And you are further notified and required to appear at the time and place and before the person and officer aforesaid, to cross-examine said witnessess in the taking of their said depositions.

122 B. WHITTEN AND N. H. GATES,
Att'ys for Applicant.

(Endorsed:) In the matter of the application of Dalles City for the perpetuation of the testimony of W. Helm, C. Eels, P. B. Whitman, & A. M. A. Blanchet. Filed August 7th, A. D. 1877. R. F. Gibons, clerk.

STATE OF OREGON,
County of Wasco, ss:

I, R. F. Gibons, being first duly sworn according to law, do depose, say that I am the county clerk of the county of Wasco, State of Oregon, and ex-officio clerk of the circuit court of the State of Oregon for the county of Wasco, and that I, on the tenth day of August, A. D. 1877, deposited in the post-office at The Dalles, in Oregon, the postage fully prepaid thereon, and plainly addressed thereon to I. M. Reed, secretary of the Missionary Society of the Methodist Episcopal Church, at its office 805 Broadway, New York City, State of New York, duly certified copies

of the petition, order, and notice to perpetuate the testimony of William Helm, Cushing Eels, Perrin B. Whitman, and A. M. A. Blanchet, in a possible controversy between Dalles City, a municipal corporation in Wasco County, State of Oregon, and the Missionary Society of the Methodist Episcopal Church.

123 R. F. GIBONS.

Subscribed and sworn to before me this 24th day of September, A. D. 1877.

In witness whereof I have hereunto set my hand and notarial seal on the day and year last above written.

[NOTARIAL SEAL.] JAMES B. CONDON,
Notary Public for the State of Oregon.

(Endorsed:) Filed Sept. 24th, 1877. R. F. Gibons, clerk.

Notice.

In the circuit court of the State of Oregon for the county of Wasco.

In the matter of the application of Dalles City, a municipal corporation, for the perpetuation of the testimony of William Helm, Cushing Eels, Perrin B. Whitman, and A. M. A. Blanchet.

Based upon a proper application and petition to me this day duly made and presented, it is hereby ordered that the deposition of William Helm, Cushing Eels, Perrin B. Whitman, and A. M. A. Blanchet be taken by R. F. Gibons, esq., county clerk of Wasco County, Ore-
124 gon, and ex-officio clerk of the circuit court of the State of Oregon for the county of Wasco, at the court-house in The Dalles, Oregon, commencing on Monday, the twenty-fourth day of September, 1877, and it is hereby ordered that notice of the taking of the deposition of the said William Helm, Cushing Eels, Perrin B. Whitman, and A. M. A. Blanchet be served upon the Missionary Society of the Methodist Episcopal Church by publication once a week for six consecutive weeks, commencing on the 11th day of August, 1877, in the Weekly Mountaineer, a weekly newspaper published at The Dalles, Wasco County, Oregon; that the notice published be directed to the Missionary Society of the Methodist Episcopal Church, requiring the said society to attend at the time and place and before the officer herein above specified and named in order to cross-examine said witnesses. And it is further ordered that during the publication of this order and the said notice as aforesaid, the publisher of the said newspaper deposit in the post-office at The Dalles, Wasco County, Oregon, a copy of said newspaper, carefully wrapped, postage fully prepaid, and directed to the said society at its office in New York City, State of New York.

And it is further ordered that the petitioner cause a certified copy of the petition and of this order to be deposited in the post-office at the place aforesaid, postage fully prepaid, and directed to the said society at its office in New York City, State of New York.

125 Done and dated this 7th day of August, 1877, at The Dalles, Wasco County, Oregon.

L. L. McARTHUR, *Judge.*

In the matter of the application of The Dalles City, a municipal corporation, for the perpetuation of the testimony of William Helm, Cushing Eels, Perrin B. Whitman, and A. M. A. Blanchet.

To the Missionary Society of the Methodist Episcopal Church, a private corporation:

You will take notice that in pursuance of an order herewith published, made on the 7th day of August, 1877, by the Hon. L. L. McArthur, judge of the circuit of the State of Oregon for the county of Wasco, to take and pepetuate the testimony of William Helm, Cushing Eels, Perrin B. Whitman, and A. M. A. Blanchet, material witnesses for applicant and petitioner in a possible controversy that may arise between The Dalles City, a municipal corporation, and the Missionary Society of The Methodist Episcopal Church, will be taken before R. F. Gibons, county clerk of Wasco County, and ex-officio clerk of the circuit court of the State of Oregon for the county of Wasco, at the court-house in Dalles City, Wasco County, Oregon, commencing at 10 o'clock a. m. on Monday, the twenty-fourth day of September, 1877.

126 And you are further notified and required to appear at the time and place and before the person and officer aforesaid, to cross examine said witnesses in the taking of their said depositions.

B. WHITTEN AND N. H. GATES,
Attorneys for Applicant.

STATE OF OREGON,
County of Wasco, ss:

I, William M. Hand, being first duly sworn, say that I am foreman in the Mountaineer office, a newspaper of general circulation in Oregon, published weekly in Dalles City, in the county and State aforesaid, and that the annexed advertisement has been published in said paper for six consecutive weeks, commencing on the 11th day of August, A. D. 1877; and ending on the 15th day of September, A. D. 1877; and I do further say, that during the publication of the said annexed notice I deposited in the post-office at The Dalles, Wasco County, Oregon, a copy of said newspaper carefully wrapped, postage fully pre-paid, and directed to the said Missionary Society of the Methodist Episcopal Church, at its office in the city of New York and State of New York, No. 805 Broadway.

WILLIAM M. HAND.

127 Subscribed and sworn to before me this 24th day of September, A. D. 1877.

R. F. GIBONS,
County Clerk.

(Endorsed:) Filed Sept. 4th, 1877. R. F. Gibons, clerk.

Deposition.

In the circuit court of the State of Oregon for the county of Wasco.

In the matter of the application of Dalles City for the perpetuation of the testimony of William Helm, Cushing Eels, Perrin B. Whitman, and A. M. A. Blanchett.

Be it remembered, that in pursuance of an order hereto annexed, and on this 24th day of September, A. D. 1877, at the county clerk's office

in Dalles City, county of Wasco, and State of Oregon, before me, R. F. Gibons, county clerk in and for Wasco County, State of Oregon, and ex-officio clerk of the circuit court of the State of Oregon for the county of Wasco, personally appeared WILLIAM HELM, a witness produced on behalf of the said Dalles City, who, being first by me duly sworn, was then and there examined and interrogated by N. H. Gates, of counsel for the petitioner, and J. C. Cartwright, of counsel for the Mis-
128 sionary Society of the Methodist Episcopal Church, and testified as follows:

Direct examination:

Interrogatory first. State your name, age, residence, and occupation.

Ans. first. William Helm; age, seventy-seven; residence, Dalles City, Oregon; and my occupation has been in the ministry.

Inter. 2d. In what church were you a minister?

Ans. 2d. In the Methodist Episcopal Church.

Inter. 3d. State when you first came to The Dalles, in Oregon.

Ans. 3d. About the middle of September, in the year 1845.

Inter. 4th. State, if you know, at what time the Missionary Society of the M. E. Church ceased to perform missionary labors in The Dalles, in Oregon.

Ans. 4th. About the first of September, in the year 1847.

Inter. 5th. State what the society did with the Dalles Mission in 1847, if you know.

Ans. 5th. They left, as I stated. I have no personal knowledge what disposition they made of it.

Inter. 6th. What persons were here who performed missionary services up to the time they left?

Ans. 6th. From the time of my arrival, in 1845, to the first of September, 1847, Mr. A. F. Waller was performing missionary service, and Mr. Brewer, a layman, was farmer, who resided at or in the vicinity of Salem after 1847.

Inter 7th. State whether or not the Missionary Society of the
129 M. E. Church have ever re-established a missionary society at The Dalles.

Ans. 7th. They have not.

Inter. 8th. State, if you know, at whose instance or by whose order the missionary station at The Dalles was abandoned, as you stated it was, in 1847.

Ans. 8th. By the order of the Rev. William Roberts, who was then the agent.

Inter. 9th. State whether or not an order was made by the Missionary Society of the M. E. Church in New York directing the abandonment of The Dalles missionary station.

Ans. 9th. I do not know.

Inter. 10th. State whether or not there was any other agent of the Missionary Society of the M. E. Church in Oregon during the year 1847. If so, who were they?

Ans. 10th. The Rev. Mr. Geary was agent until the arrival of Mr. Roberts in 1847; this is my best recollection.

Inter. 11th. State what business you were engaged in from the year 1845 to 1848, and where you resided.

Ans. 11th. I was below in the spring of 1846, and was employed to travel and preach to the white population in the Willamette Valley, by the agent of the Missionary Society, and continued in that service up to the year 1850.

Inter. 12th. State if the Missionary Society of the M. E. Church occupied any other missionary station in Oregon. If so, where and when?

Ans. 12th. There was a station some where on the sound, which was abandoned before my arrival in Oregon, and one at Clatsop, which was sold to Mr. Parrish in the spring of 1846. There was one established about 12 miles below Salem, which was transferred to Salem before my arrival.

Inter. 13th. State whether or not the Missionary Society of the M. E. Church maintained any missionary station among the Indian tribes east of the Cascade Mountains, in Oregon, at any time after September, 1847.

Ans. 13th. They have not.

Cross examination:

Inter. 1st. State what disposition was made of the station at Salem.

Ans. 1st. Mr. Geary, the agent, closed out the station, and it was abandoned as an Indian station in 1845. After my arrival at Salem in 1846 the friends of the institution desired to established a school for the whites, and appointed me a trustee.

Inter. 2d. In closing out these stations, after Mr. Geary came out in 1844, was it the habit to dispose of the property attached to or belonging to the different stations?

Ans. 2. The station below Salem was closed before I came out. Clatsop station was sold in the spring of 1846, and the Salem station in 1845. All the property belonging to the several stations named was disposed of; the institute at Salem was reserved and afterwards transferred to the M. E. Church.

Inter. 3d. Were you at any time after the spring of 1846 a resident of Oregon east of the Cascade M't's until some time after the year 1860.

Ans. 3d. I was not.

WILLIAM HELM.

STATE OF OREGON,
County of Wasco, ss:

I, R. F. Gibons, county clerk in and for Wasco County, and ex-officio clerk of the circuit court of the State of Oregon for the county of Wasco, do hereby certify that the witness in the foregoing deposition, to wit, William Helm, was by me duly sworn to testify the truth, the whole whole truth, and nothing but the truth; that said deposition was taken at the time and place mentioned in the annexed order, to wit, at the county clerk's office, in The Dalles, in the aforesaid county and State, and on the 24th day of September, A. D. 1847, between the hours of ten o'clock a. m. and twelve o'clock m. of said day; that said deposition was by me carefully read to said witness, and was then by him subscribed.

In witness whereof I have hereunto set my hand and affixed the seal of said circuit court this September 24th, A. D. 1877.

{ CIRCUIT COURT OF WASCO } R. F. GIBONS, *Clerk.*
{ COUNTY, STATE OF OREGON. }

(Endorsed:) Filed Sept. 24th, A. D. 1877. R. F. Gibons, clerk.

NATHAN OLNEY, a witness of lawful age, introduced on behalf of Dalls City and W. D. Bigelow, being duly sworn, deposeth and saith:

I am thirty-five years of age. I reside in Wasco County, Oregon,

about seven miles east of Dalls City. Arrived in Oregon September, 1845, and resided at or near the Dalls since December, 1847. As near as I recollect, the first settlement upon the town-site of Dalls City was made in the fall of 1851. McKinley, Craig & Robert Newell made the first settlement upon said site. The next settlement was made upon the spring following (1852) by William Gibson, for the purpose of trade. From the spring of 1852 there has been a constant accession for trade; quite a number settled in the fall of that year for trade.

Question by contestants. What do you know in relation to the Methodist Missionary Society occupying the lands near the present town-site of Dalls City?

Answer. When I arrived here in December, 1847, the mission buildings were unoccupied, and from that day to this have not been occupied as a mission station. In 1845, when witness passed the Dalls, there was a missionary station at that place. Mr. Hinman left the Dalls about the month of December, 1847. Mr. Hinman was con-
134 nected with the missionary society. Perrin B. Whitman and Dr. Saffarns were in company at the Dalls with Mr. Hinman, and left in his company. When witness arrived at the Dalls in December, 1847, he found the mission property all remaining that had been left by *by* Hinman, consisting of stock, household furniture, &c. In February, 1848, Mr. Hinman and other missionaries came up and took away their property, to wit, stock and everything else movable; some of the windows and doors were taken away at the time. He did not see who took them. Everything of value that could be taken from the building was then taken away. The buildings were then left in possession of the volunteers, and occupied as a fort. The volunteers were withdrawn late in the summer 1848, from which time they remained unoccupied except by transient persons. The buildings above referred to were located at a point between a half and three quarters of a mile from the Columbia River, in a southerly direction, at or near a spring now known as Government Spring, at that time called "Mission Spring," and is now within what is known as the military reserve. The improvements consisted of two dwelling-houses, one church, one schoolhouse & a barn. There was some land enclosed, say from thirty to forty acres within the enclosure, and about one-third of that amount
135 in cultivation by the white people, and the remainder, of about one half, by the Indians. The enclosure did not extend north of the bluff. The mission did not at any time occupy any land north of the bluff. The Indians occupied the land between the bluff & the river by a village. It would be difficult for witness to set a value upon or cost of those improvements. They were made principally by Indian labor, as witness judges, from the kind and manner of the improvement, having no personal knowledge of their construction. Estimating their cost at the full amount, they cost exceeding three hundred dollars; they were indifferent, and no expensive work upon them; about such as a frontier people would construct in the first settlement of a country; one building was a regular frame building, filled in with adobe, two stories high, and about twenty by thirty feet square, and a hewed log dwelling, about two stories high; a hewed log school-house, two stories high; a round log church, and a frame barn about eighteen by twenty-four feet. After the summer of 1848 they were all vacant, the volunteers having then been withdrawn. The buildings referred to were included within the military reservation in early part of the summer of 1850. After the volunteers were withdrawn the buildings were frequently occupied by transient persons and traders who stopped to

trade with the Indians. A party which was out on Powder River
136 prospecting for gold in the fall of 1848 wintered in these buildings the winter of 1848–'9.

Question by contestants. Who was in the occupation of the premises on the 14th day of August, 1848?

Answer. A small detachment of volunteers was in the occupancy about that time, taking care of some government property (provisional government). The main body of the troops had been discharged about the first of June, 1848, and only two small detachments, one at Dalls and one at Whitman's, remained in charge of the government property at those places; quiet had been restored to the country. Dr. Whitman was murdered between the middle and last of the month of November, 1847, by the Cayuse Indians, or a small band under Te-to Kite, their chief. Whitman station, where the murder was committed, is about one hundred and forty miles east of the Dalls.

Question by contestants. State whether there was any hostilities on the part of Indians towards the whites prior to December, 1847.

Answer. There were no actual hostilities up to the time mentioned (Dec., '47); any depredations that occurred were by outlawed Indians, or grew out of personal difficulties between and were confined to individuals. Emigrants were constantly traveling till the early part
137 of November of that year, when the last of them got in. After the disbanding the troops in the spring of 1848, the relations between the whites and Indians were friendly. Witness resided at the Dalls after the spring of 1848, and had an every-day intercourse and trade with them, and were more friendly after that war than before. Witness located a claim near the Dalls in March, 1848, and resided thereon without any apprehensions of difficulty with Indians. The Catholic bishop located a mission station or claim adjoining witness on the east in June, 1848, and have continued to occupy it until this time as such station. Witness remained at home near the Dalls during the year 1848, and know that no ownership was exercised over the Methodist missionary buildings and improvements by them, and could not have been surveyed or marked as a claim, nor did witness ever observe any claim boundary.

Question by the claimant. Where did you meet Mr. Hinman & Company?

Answer. At Wind Mountain, ten miles above the "Cascades." They were on their way to the Willamette Valley. The volunteers arrived at the Dalls in the month of December, 1847. At that time there were no white persons at the Dalls. The volunteers came to the Dalls to chastise the Indians for the massacre at Whitman Station. From
138 the time witness first come to the country till he come to the Dalls, in 1847, he was travelling much of the time, and had not made any definite location. When witness located at the Dalls, he had an Indian woman of the Deschutes tribe, and has had one most of the time since, with whom he has lived as his wife.

By contestants:

From September, 1847, until his death, Dr. Whitman lived at and occupied what is known as Whitman Station, in the Cayuse country, and was murdered at that place, which was within the territorial limits of Oregon.

NATHAN OLNEY.

Subscribed and sworn to before me this 20th day of February, 1860.

W. W. CHAPMAN,
Sur. Gen'l, Or'g'n.

(Endorsed:) Methodist mission claim at The Dalls, O'g'n. Testimony of N. Olney.

139 STATE OF OREGON,
Wasco County, ss:

I, W. C. Moody, clerk of said county, do hereby certify that R. H. Condon, the person subscribing the foregoing deposition, and before whom the same was taken, was on the 18th day of September, 1860, therein mentioned as acting justice of the peace in and for said county, as appears of record now in my office, and that he as such is duly authorized to administer oaths; and that I am acquainted with the handwriting of the said R. M. Condon, and that the signature there of the foregoing depositions are genuine.

In testimony whereof I have caused the seal of the county court of said county to be hereunto affixed this 20th day of September, 1860.

[OFFICIAL SEAL.] W. C. MOODY,
Clerk County Court.

Fees of copying, $8.50. Paid by J. K. Kelly. Jennie A. Hinman.

140 THE METHODIST MISSION, EPISCOPAL Church, claimants,
vs.
DALLS CITY AND OTHERS, CONTESTANTS.

It is stipulated and agreed between the claimants and contestants herein that no depositions shall be taken herein at the Dalles for use before the surveyor-general until Tuesday, the 18th of September, 1860.

Sept. 12th, 1860.

W. W. PAGE,
Counsel for Claimants.
BRIDGES & GATES,
For Contestants.

141 Before the surveyor-general of Oregon.

THE METHODIST EPISCOPAL CHURCH MISsion, claimants,
vs.
THE DALLES CITY & OTHERS, CONTESTANTS.

Deposition of R. R. THOMPSON, a witness produced & sworn to give evidence in the above-entitled cause on behalf of the contestants, taken by the agreement of the parties hereto annexed to deposition Wm. C. Laughlin.

Interrogatories to the witness, propounded by claimants, on his voir dier.

Int. 1. Are you directly or immediately interested in the event of this cause?

Ans. I do not see that I shall be benefited or damaged by the result be it what it may.

Interrogatories by the contestants:

Int. 1. State your name, age, and residence.

Ans. 1. Robert R. Thompson; age, 40 years; residence, Portland, Oregon.

Int. 2. When did you come to Oregon?

Ans. 2. I arrived in the settlements of Oregon in the autumn of the year 1846.

Int. 3. Are you acquainted with the lands, at or near The Dalls, claimed by the Methodist mission? If so, state all you know in
142 relation to its having been occupied by them.

Ans. 3. I am acquainted with the lands upon which The Dalles is situated, as also the site upon which stood the buildings formerly occupied by the Methodist mission. My first visit to the above named point was in the latter part of the month of November, 1848. At that time I observed the buildings of what was understood to be the Methodist Mission and the improvements in a good state of preservation. They were unoccupied at the time of our arrival. I was one of the party of 30 or 40 persons who took possession of those premises, and occupied them for a short space of time while on our way to Powder River in search of gold. We found some animals there, claimed by one of the party, Dr. Saffrerns, and he claimed to have resided at the mission for a short time. We found the Indians numerous, and very friendly, or barter and render us any assistance that we required, on any terms that we might make with them or agree upon. The same remark is true of all the Indians we met from there to the Umatilla, in the Cayuse country, 130 miles above The Dalles, at which point we turned back. We travelled through the country taking no more care or precaution than is usually had by persons travelling through an Indian country. As an evidence of the security of the whites in the country in the vicinity
143 of The Dalles, I will mention that a gentleman, Mr. Nathan Olney, resided within two miles of the mission station already referred to, and that while we were stopping in the mission house he assisted an Indian, one of a party of Indians who had murdered two white men, brought him to and delivered him over to us, that we might take him to the Willamette for trial. This was done by Olney without any apprehension of trouble from the Indians. There was a Catholic mission occupied at that time, situated between the Methodist mission and Mr. Olney's residence.

Cross-examination:

Int. 1. Was Olney at that time living with an Indian woman; and, if so, is he now?

Ans. 1. He was then, and I believe is now.

Int. 2. Do you know if the Catholics, since the time you have referred to, have had their mission stations among the Indians during hostilities? State to the best of your knowledge.

Ans. 2. I know the Catholics to have had missions at the breaking out of hostilities in the Indian country, and that in two instances they were forced to abandon them, and of the priest of one of these missions being carried off and kept for some time a captive by them.

Int. 3. Is your preceding answer based upon personal knowledge, or upon what others have told you?

144 Ans. 3. My answer foregoing was based strictly upon the interrogatory knowledge.

Int. 4. Was that knowledge told you by others?

Ans. 4. My knowledge was derived through my official capacity of Indian agent, having had access to some of the correspondence coming into the hands of the military, in whose hands I saw a letter from Father Pandoza, who had been carried off captive by the Indians.

Int. 5. Do you know the handwriting of Father Pandoza?

Ans. 5. I do not; the letter purported to come from him.

Int. 6. Do you own or lay claim to any lots, or claim any interest in any lots or ground, situate in The Dalles? If so, state the value thereof, with the improvements.

Ans. 6. I am interested in several lots of ground in the precincts or town plot of The Dalles, the value of which two or more thousand dollars.

Int. 7. Do you claim your said property under or by virtue of the town entry, or by what right do you claim?

Ans. 7. I claim by right of possession and occupancy.

Int. 8. Is the land so held by you within the limits of what is claimed by the mission?

Ans. 8. I understand that the mission set up a claim to the town site of The Dalles.

Int. 9. Is the claim of the mission opposed to the right by which you claim?

Ans. 9. I have no contest with the mission or any one else.

145 Int. 10. Have the mission, directly or indirectly, acknowledged your claim or interest in the land to which you have before referred? If so, how?

Ans. 10. They have. Some years ago, when the town was being surveyed for the mission under the direction of the Rev'd Mr. Pearne, he said those occupying improvements upon lots at that time would have no serious contest with the mission in making satisfactory adjustments in the event of their obtaining a title.

Int. 11. Have you not repeatedly expressed yourself as antagonistic to the claim of the mission?

Ans. 11. I have frequently, and do now give it as my decided opinion that the Methodist mission have no right, in law or equity, to the town site of The Dalles.

Int. 12. Were you asked your opinion in regard to the right of the mission as expressed in the next above answer, or was it volunteered? (Objected to as irrelevant by counsel for contestants.)

Ans. 12. I do not know what the object of the interrogatory may have been. I have answered the question propounded fully, frankly, and decidedly.

Direct resumed:

Int. 13. When did Indian hostilities cease in and about The Dalles?

146 Ans. 13. I believe in 1856, and there has been none since.

Int. 14. What is the value of The Dalles town site at this time?

Ans. 14. I cannot tell.

Int. 15. What distance were the Methodist-mission buildings from the body of the town?

Ans. 15. The site of the old buildings of the mission is somewhere about one-half or three-fourths of a mile from the river at a medium stage of water.

Int. 16. What improvements, if any, did the Methodist have on the town-site of Dalles when you were here in 1848?

Ans. 16. There were no improvements whatever north of the bluff.

Int. 17. What position has Mr. Nathan Olney held under the government of the U. S. since the time you saw him in 1848?

Ans. 17. In 1854 I knew of Mr. Nathan Olney having command of a small company of volunteers, who were acting in conjunction with a company of regulars in an expedition against the Snake Indians, who

were recognized and paid by the U. S. Subsequently, say in the year 1855 or '56, he received a commission as Indian agent for Oregon.

ROBERT R. THOMPSON.

147 STATE OF OREGON,
County of Wasco, ss:

I, R. H. Condon, justice of the peace, in and for said county, do hereby certify that the above deposition was taken before me, and reduced to writing by myself at Dalles City, in said county, on the 18th day of September, 1860, at 10 o'clock p. m. in pursuance of notice; that the above named witness, before examination, was sworn to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to said witness corrected as desired and then subscribed by him.

Dated at Dalles the 18th day of September, 1860.

R. H. CONDON.
Justice of the Peace.

148 Before surveyor-general of Oregon.

THE METHODIST EPISCOPAL MISSION, CLAIMANT,
vs.
THE DALLES CITY AND OTHERS, CONTESTANTS.

Deposition of WM. C. LAUGHLIN, a witness produced and sworn, to give evidence in the above entitled cause, on behalf of the contestants, taken by the agreement hereto annexed.

Int. 1. Will you state your age, and residence?

Ans. 1. I am 45 years; residence, at Dalles, Wasco County.

Int. 2. How long have you resided in Wasco County?

Ans. 2. I came to Dalles on the third of October (1850), eighteen hundred and fifty.

Int. 3. What was your object in coming to Dalles?

Ans. 3. To make a settlement.

Int. 4. State what was the situation of the land at the time you came rhee, where the town of Dalles is now built.

Ans. 4. It was vacant—unoccupied—it had no improvements near to where the town is now situated; there were two settlers and a military post. I desired to settle on the ground where the Dalles is now situated,
149 but was positively refused by the military, they claiming it as a military reservation. Brevet Major Tucker was in command of the military post at that time. At that time in 1850, they had no boundaries, but in 1852 they had ten miles up and down the river, the Dalles being the center of the reservation claimed by them; that is, by the military post.

Int. 5. Do you know in what section the town of Dalles is now situated?

Ans. 5. It is now situated in northwest fractional quarter of sec. 3, T. 1 N., R. 13 E.

Int. 6. At the time when you came here was there any Methodist mission here?

Ans. 6. There was none.

Int. 7. Did you have any conversation at any time with the Rev'd William Roberts with regard to the Methodist mission at the Dalles? If so, please state it and when it was.

(Objected to by counsel for claimants, first, because it calls for hearsay evidence; 2d, because no foundation has been laid to impeach the testimony of Mr. Roberts, and it is irrelevant.)

Ans. 7. I had *no* conversation with Mr. Roberts some time in the year 1858, in which he told me he came to Oregon in 1847, the object of his coming here being to retrench the mission; that he as the agent
150 found it necessary to discharge a great many persons for want of means to carry on their work as missionaries; that he had sold the missionary station at the Dalles and that the missionaries of that station had returned to the Willamette Valley, for the purpose of carrying on a *a* mission there. This he told me was done in the fall of 1847. He said that the mission at Dalles was so remote from their other stations—that it was nearer to Dr. Whitman's station—that he had proposed to sell and move the station to the valley to save expense; that is the substance of the conversation—very near the words.

Int. 8. State when the settlement commenced on the land where the town of Dalles is now built and for what purpose; and how much is the land and improvements thereon now worth?

Ans. 8. In 1851, by McKinley, Newell & Co.; early in spring of '52 by William R. Gibson; the object of these two firms was merchandising or trading, and in 1853 quite a number of houses were built. All settlements on the town site were made by permission of the military department of the U. S. up to 1855, and the land with the improvements is worth more than $100,000.00.

Int. 9. What took place in regard to the land in 1855?

Ans. 9. A portion of the land now occupied as a town site was
151 given up by Major Raines, commander of the post Fort Dalles, as a town site in the summer of 1855.

(The foregoing answer is objected to by counsel for claimants and moved to be stricken out because irrelevant and because it is not the best evidence of what was done by the military. It is not record evidence nor did Major Baines have the power to throw off land from a military reserve.)

Int. 10. Upon what conditions was the land referred to abandoned by the military?

(Objected to because the best evidence should be produced of what was done by the military and is not here called for.)

Ans. 10. That the people would immediately lay off and plot a town, and then complied with the conditions, and Lieut. Forsyth, of the U. S. Army, laid off and surveyed the town; settlement progressed rapidly from that time forward, and there are now about twenty stores open here for the selling of goods.

Cross-examination:

Int. 11. State whether or not in the conversation referred to
152 with Mr. Roberts, he said that he sold the land claimed by the mission.

Ans. 11. I think he did not so state.

Int. 12. From whom and how have you derived what you have testified to concerning the land thrown off by the military?

Ans. 12. I derived it from Maj. Raines in a conversation with myself and others in this town.

(Counsel for claimant object to all that evidence relating to the throwing off of land by the military, and move that the same be stricken out because it is hearsay.)

WM. C. LAUGHLIN.

STATE OF OREGON,
County of Wasco, ss:

I, R. H. Condon, justice of the peace in and for said county, do hereby certify that the above deposition was taken before me, and reduced to writing by myself, at Dalles City, in said county, on the 18th day of September, 1860, at 2 o'clock p. m., in pursuance of notice; that the above-named witness, before examination, has sworn to testify the truth, the whole truth, and nothing but the truth, and that the said depositions was carefully read to said witness, corrected as desired, and then subscribed by him.

Dated at Dalles the 18th day of September, 1860.

R. H. CONDON,
Justice of the Peace.

153 PERRIN B. WHITMAN, a witness of lawful age, introduced on behalf of the contestants, being duly sworn, deposeth and saith:

Question by Col. KELLY & Mr. GATES:

Q. State your age, occupation, and present residence.

Ans. He is 30 years of age, by occupation a farmer, and reside in Marion County.

Q. How long have you resided in Oregon?

Ans. Nearly seventeen years.

Q. With whom did you come to Oregon?

Ans. With Dr. Marcus Whitman, in 1843.

Q. In what capacity did Dr. Whitman come to Oregon, and when did he first come?

Ans. He (Dr. Whitman) came in 1836, as missionary amongst the Indians. Dr. Whitman having been in Oregon returned to the States in 1842, and returned there again '43.

Q. State whether Dr. Whitman had any missionary station under his charge or superintendence, and if so, where was it, and how long was he in charge of it?

Ans. He had a mission station in Walla Walla Valley from August, 1836, till the 29th day of November, 1847.

Q. What missionary society was he a member of?

Ans. The Presbyterian Society of the American Board of Foreign Missions.

154 Q. Had Dr. Whitman any other missionary station except the one in Walla-Walla Valley since 1843?

Ans. Not any.

Q. Do you know anything about Dr. Whitman having purchased a missionary station near or at the Dalles of the Columbia from the Methodist Missionary Society? If so, state it.

(Answer objected to unless in writing.)

Ans. Witness understood from Dr. Whitman that he purchased the Dalls station from the Methodist society in the month of August, 1847.

Ans. Were you at the Dalls station in or about the month of August, 1847?

Ans. About the first of September, 1847, witness was at the Dalls station, and thinks he remained there until about the 16th December, 1847.

Q. State when the Methodist Missionary Society removed their property from the Dalls Methodist Missionary Station?

(Objected to because leading, and assumes a statement not proved.)

Ans. They took some before witness got there.

Q. Were any missionary services performed by the Methodist society at the Dalls station since August, 1847, or did they occupy that station in any way since that time?

(Objected to.)

Ans. Not to my knowledge.

Q. Were you employed in any capacity at the Dalls by the American board?

155 Ans. He was not.

Q. Did Dr. Whitman perform any missionary services at that place as a stationed missionary of that board?

Ans. He did not.

Q. When Dr. Whitman purchased the Dall's station where did he go to reside and labor?

Ans. To Walla Walla station.

Q. In whose possession and charge did he leave the Dalls station when he went to Walla Walla Waller station?

Ans. In that of witness.

Q. In what capacity were you holding the Dalls station from the first of September, 1847, to the 16th of Dec. 1847?

Ans. Under the promise of one-half from Dr. Whitman.

Q. State for what purpose Dr. Whitman purchased that station.

Ans. For a home for both he and witness.

Q. Was there any danger in remaining at the Dalls in the fall of 1847, from hostile Indians, from August and prior to December 16, 1847?

Ans. No; the witness was there alone from middle of September till middle of October of that year.

Q. Did you go back at any time to that station after you had left in Dec., 1847?

Ans. We did; we left Oregon City about 2d January, 1848, and went immediately to the Dalls.

156 Q. Did you take possession of the station before referred to? if so, how long did you remain in possession?

Ans. We did; and remained there from January till the last of March, 1848.

Q. Why did you leave there?

Ans. Because of being employed as interpreter for the volunteers in the Walla country.

Q. Did you afterwards resume possession of that claim; and, if so, how long did you continue there?

Ans. We resumed and continued in possession a few in the latter part of September, 1848.

Q. Were you ever afterwards in poss'ion of the station?

Ans. Yes; we was in possession in the months of April, May, & June, 1879; it may have been as early as March.

Q. Why did you leave the station in June, 1849?

Ans. For fear of the Indians. We went again in April, 1850, and continued till about the first day of June, following; it may have been as early as May.

Q. On the 14th day of August, 1848, was there any missionary station at the Dalls actually occupied as such?

(Objected to.)

Ans. There was not.

Q. What persons, if any, besides yourself, were at the Dalls station between the first of September and seventeenth of Dec., 1847?

Ans. Within the dates last named S. S. Hinman, Henry Saffrons, and William McKenney.

157 Q. In what capacity were Hinman & Saffrons acting?

Ans. Hinman was there to keep house until the Dr. Whitman should move down the following spring. Saffarans was there, witness thinks, for his health; he had nothing to do with the farm or station. McKinney was an immigrant of that year, and stopped there to winter.

Q. When did the Methodist missionaries and their families leave the Dalls station?

Ans. Between the first and tenth of September, of 1847.

Q. State where Dr. Whitman started from to take possession of the Dalls station.

Ans. From his own place in Walla Walla he came by the Dalls down here to the Willamette; witness crossed the mountains and met Dr. Whitman in the Willamette Valley. They, together, returned to the upper country to the Dalls—Dr. W. to Walla Walla. The same boats that took us up brought the missionaries down on the return trip.

Q. What missionaries were they who left on the return boat?

Ans. Messrs. Brewer and Waller; he thinks both famil'es, and one or both of Mrs. Waller & Brewer.

Cross-examined by Messrs. WILLIAMS & GIBBS.

Q. What was your age when you commenced your residence at the Dalls?

158 Ans. I was seventeen years old and upwards.

Q. Have you ever acted as interpreter for any person or persons wishing to communicate with the Indians east of the Cascade Mountains? If yes, state fully for whom and for what purpose.

Ans. He has. He interpreted for Hinman at the Dalls, Gen'l Palmer as superintendent, and for nearly or quite all of his successors. He also interpreted for H. A. G. Lee, as superintendent, and for Dr. Dait.

Q. Was there any other interpreter at the Dalls while you were there?

Ans. There was none.

Q. What interest in the Dalls claim have you? If any, state what.

Ans. He has none now; was to have had a half section; had the promise of it from Dr. Whitman.

Q. Have you ever released or relinquished your claim to that station?

Ans. Does not know what may be considered a relinquishment; never has bargained any right away; never held any other donation claim, because he claimed the Dalls station, or a part of it.

Q. Do you ever expect to get any portion of the Dalls claim, or any interest growing out of it?

Ans. He says perhaps he will try.

159 Q. Is there any arrangement between you and any claimants of said property by which you expect to be benefited?

Ans. No arrangement whatever.

Q. Do you know anything of the rules of the Presbyterian Society as to whether or not their missionaries are allowed to hold lands or other property in their own right within the sphere of their missionary labors?

Ans. He does not.

Q. Do you know, of your own knowledge, that Dr. Whitman made any purchas' of the station at the Dalls.

Ans. Only what he told me.

Q. Did he (Dr. Whitman) ever preach to the Indians at the Dalls, or perform other missionary labors at the Dalls, to your knowledge?

Ans. Not to his remembrance.

Q. Did you ever interpret for any one to teach or preach for the Indians at the Dalls; if so, for whom?

Ans. He did interpret three times for a kind of conversational preaching by A. Hinman.

Q. For what reason did A. Hinman and others leave the Dalls in the fall of 1847?

Ans. From the fact that the massacre of Dr. Whitman had taken place and made it unsafe to remain longer.

Q. Did you leave at that time?

Ans. He came to the Willamette for safety.

160 Q. While in the Willamette, did you try to raise a force to chastise the Indians for killing your uncle?

Ans. I did not, but returned to the Dalls with the volunteers.

Q. Was not the chastisement of the Indians your object in returning to the Dalls with the volunteers?

Ans. Cannot say that was the entire object in returning to the Dalls.

Q. At the time you was at the Dalls with Gen'l Lane, when the murderers were taken, what was your object in going, and how long did you remain?

Ans. He intended to remain there, if it was intended to remain safe; and it was not safe, and I therefore returned to the Willamette.

Q. Was the buying of horses any part of your business, and did you buy and take back any with you to the Willamette?

Ans. He did not go expressly for that, but bought four, & brought back.

Q. From whom did you buy them?

Ans. From the Indians; they were Indian horses.

Re-examined by the contestants:

Q. What was your ostensible business in returning to the Dalls at the time last referred to?

Ans. To try and hold the claim at the Dalls.

Q. Did you intend to try to hold the claim for yourself or for the American board?

Ans. For himself.

161 Q. Did you mark out any boundaries of a claim before Dr. Whitman's death, or did he do so?

Ans. We marked none; he only gave me the choice of which half. Witness chose the west half, embracing the mouth of the creek; does not know that it was known by his uncle, Dr. Whitman, where exactly the corners were.

Q. In what capacity did Mr. Hinman act while there?

Ans. Mr. Hinman was employed by Dr. Whitman, as witness understood it, to keep house for witness till Dr. Whitman could move down; he had no more to do or say than witness; he was a hired hand, under wages.

Q. Was any person employed there after Dr. Whitman took possession to teach "or preach" to the Indians, or to perform any other missionary labors among them?

Ans. Not that he knows; the way he understood that at the time that what little Hinman did say to them upon religious subjects was by the wish of the Indians.

Q. What did Dr. Whitman say to you was his object in purchasing

the Dalls mission station from the Methodist society? Was it for missionary purposes or for trade and commerce?

(Objected to.)

Ans. The Dr. said he bought the station for a home for both
162 of us, and to keep the Catholic priests from building a station there. He remarked in these words, as well as witness can remember: "It is the keystone of the upper country," if the upper country should ever settle. He (Dr. Whitman) told witness, in the presence of Dr. Wilson and J. L. Parrish, that witness could have his choice of a half section of land upon the Salem Bause, or half section of land at the Dalls, a part of the mission claim, by going up with him and taking care of it until he should come down in the spring from Walla Walla.

(Claimants' counsel objects to the whole of the testimony of the witness, because it appears from the same that the claims the land in question, and is interested in the result of this controversy.)

Question of the SURVEYOR-GENERAL:

Did Dr. Whitman give you any instructions as to your duties at the station during his absence? If so, state briefly what these instructions were.

Ans. He told witness what to do. He told him to sow some wheat and keep the fenses up. That is about all.

Q. At or about the time of Dr. Whitman's leaving for the Walla Walla, did he give (to your knowledge) Mr. Hinman any instruc-
163 tion as to his duties in the Dr.'s absence? If so, state *what*, briefly, what they were?

Ans. He (the Dr. W.) gave none to the knowledge of witness. Hinman did not come for five or six weeks afterwards.

Q. Was you informed by Dr. Whitman that Mr. Hinman was at any time to join you at the Dalls? If so, state briefly that conversation.

Ans. Before uncle left for Walla Walla he told witness that Mr. Hinman would be up from the Willamette soon, with his family, to keep house for witness until Dr. Whitman should come down.

PERRIN B. WHITMAN.

Subscribed and sworn to before me, at Salem, this 15th day of September, A. D. 1860.

W. W. CHAPMAN,
Sur. Gen'l.

(Endorsed:) Testimony of P. B. Whitman.

164 In the United States circuit court for the District of Oregon. In equity.

DALLES CITY, PLAINTIFF,
vs.
THE METHODIST MISSIONARY SOCIETY OF the Methodist Episcopal Church, defendant.

ELISHA MCDANIEL, after being first duly sworn, testifies as follows:

Interg. 1. State your name, age, and residence.

Ans. Name, Elisha McDaniel; born 1824, January 8th; residence, Polk County, Oregon.

Interg. 2. State if you are acquainted with the land upon which the town of Dalles City is built, and the land formerly occupied by the Missionary Society of the Methodist Episcopal Church.

Ans. I am.

In. 3. Will you please state where the improvements were as located by the missionary society?

Ans. Northeast of their residence, or the house they lived in, and south of the town, about a quarter of a mile south of the rocky bluff.

Inter. 4. State when you first became acquainted with the land referred to?

165 Ans. The last of October, 1844. Saw it again the 5th day of February, 1845. In the spring of 1848, the 7th or 8th of March, returned again.

Inter. 5. State what improvements, if any, you knew of or seen on the land you referred to between the rocky bluff and the Columbia River?

Ans. There wasn't any at all, sir.

Int. 6. State who occupied it, if any person.

Ans. Indians were camped on it and the emigrants also camped on it in passing through. There was an Indian village on it.

Inter. 7. Who had the possession of the improvements on the bluff belon'ing to the missionary society?

Ans. The volunteers had possession.

Inter. 8. State where the missionaries were, if you know.

Ans. Mr. Waller was in Salem, I think, and Mr. Brewer was in the East. There were no missionarys here.

Question by defendant's counsel:

Inter. 9. What use was made of the land between the bluff and the mouth of Mission Creek, now Mill Creek, in 1844 & '5, when you were here?

Ans. It was the commons then where the emigrants camped; the Indians were also occupying it, there we' several lodges.

Int. 10. You may state whereabouts the landing was on the Columbia for this section of the country in 1845.

166 Ans. The main landing was just above the mouth of Mill Creek.

Int. 11. What route would the missionaries go in passing from the mouth of Mill Creek or the landing to their buildings on the bluff?

Ans. With wagons they would go rather south until they got on top of the bluff and then they would bear a little east to get up where their buildings were.

Int. 12. State if the space between the missionary building and their landing on the Columbia River was not used for the purpose of grazing their stock, and as a general camping place for Indians who came to the missionaries for trade or instruction.

Ans. It was open for everybody; it was a general camping place; Indians as well as any one so far as I could see.

Int. 13. How long did you remain here in 1848?

Ans. About a month.

Int. 14. What buildings were the volunteers occupying at that time?

Ans. They were occupying the houses Mr. Brewer and Mr. Waller lived in when I first come here in 1844.

Re-examined by plaintiff's attorney:

Int. 15. What time do you refer to when you say there were no improvements on the land between the rocky bluff and the Columbia River?

167 Ans. When I came here in 1844 there was nothing on it; Indians and emigrants used it as a camping ground. The next

time I came here, in June, 1848, it was still used as a camping as before. When I came here in 1855 and '6, I found a town laid out.

Int. 16. State what you mean by the missionaries landing on the Columbia River.

Ans. I didn't know of any landing by that name; it was the main landing where every one landed; they could land all along because I suppose that was the nearest.

ELISHA McDANIEL.

Deposition of Elisha McDaniel, taken by consent of the parties above named, subject to legal objections as to time.

STATE OF OREGON,
Wasco County, ss:

I, James A. Campbell, a United States commissioner, duly appointed and qualified as such, do hereby certify that the above and foregoing deposition of Elisha McDaniels was taken before me at Dalles City, Wasco County, Oregon, on this the 27th day of March, A. D.
168 1879, between the hours of ten o'clock a. m. and four o'clock p. m. of said day, and that said deposition was reduced to writing by George Watkins; that before proceeding to examine the said witness Elisha McDaniels, he was duly sworn by me to tell the truth, the whole truth, and nothing but the truth; that the said deposition after being committed to writing was carefully read to the said witness and then subscribed by him.

In witness whereof I have hereunto set my hand this 28th day of March, A. D. 1879, at Dalles City, Wasco County, Oregon.

J. A. CAMPBELL,
U. S. Commissioner.

169 In the United States circuit court for the district of Oregon. In equity.

DALLES CITY, PLAINTIFF,
vs.
THE MISSIONARY SOCIETY OF THE METHODIST EPISCOPAL CHUCH, defendant.

Deposition of Edward Crate.

EDWARD CRATE, after being first duly sworn, testifies as follows:

Inter. 1. State your name, age, and residence.

Ans. Edward Crate; I am over sixty years old; residence, Wasco County, Oregon, four miles below the Dalles.

Inter. 2. State if you are acquainted with the land on which Dalles City is built, and also the land that was formerly occupied by the Methodist Missionary Society.

Ans. Yes, sir.

Inter. 3. State when you first knew it.

Ans. Since 1838. I was a boy then, and we camped right here.

Inter. 4. State if you were here in 1847.

Ans. Yes, sir; passed through in June, 1847, going up; camped here.

170 Int. 5. State if in June, 1847, when you passed up, who was occupying the land between the Columbia River and the Rocky Bluff—from the mouth of Mill Creek up to the bluff.

Ans. It was a camping ground for everybody.

Int. 6. When were you here again?

Ans. In the spring of 1848.

Int. Who did you find on this ground referred to then?

Ans. Between the bluff and Columbia River found no one.

Int. 7. Who did you find where the missionary station formerly was?

Ans. Didn't find any one but the volunteers and a few Indians. I mean to state that we went up to Walla Walla in June, 1847, and in January, 1848, we came back down by the Dalles with the women and children, the survivors of the Whitman massacre. I was working for Mr. Ogden, of the Hudson Bay Company, at that time.

Int. 8. State, if you know, when the Methodist missionaries in charge of this station at the Dalles left here.

Ans. They were not here when we came back down from Walla Walla, in 1848.

Int. 8. Were you acquainted with the Indians in the vicinity of the Dalles during 1847?

Ans. Yes, sir; I was acquainted with them before that; since 1846, and been acquainted with them ever since.

171 Int. 9. State what the feelings were of these Indians toward the white people in this country, from the time you first knew them up to 1848?

(Objected to. Objected to as irrelevant and immaterial by defendant's attorney.)

Ans. They were friendly enough so far as I knew; when we went through here they did us no harm nor I heard of them doing no injury to the whites. They were always friendly and tried to help the white people. When we went to the Cayuse war they wanted to let us have fresh horses. Kaskiller (a head man among the Indians) offered to let Captain McKay have fresh horses to go to fight the Cayuces during the first Cayuce war. Kaskiller was a Wascopum Indian, and belonged about the Dalles.

Int. 10. State if you ever heard of the Indians about the Dalles being hostile to the white people.

Ans. No, sir.

Int. 11. If they had have been hostile toward the white people would you have been likely to have known it?

Ans. Yes, sir.

Int. 12. When was the first settlement made upon the ground where Dalles City is now built?

Ans. It was in 1851; I believe, by McKinley and Robert Newell.

172 Questions by defendant's counsel:

Int. 13. State about how many years you were in the employ of the Hudson Bay Company.

Ans. Eight years, about.

Int. 14. What business were you engaged in?

Ans. Boating up and down the Columbia River.

Int. 15. State how you know that Kaskiller or any other Indian ever offered Captain McKeay any horses during the Cayuse war.

Ans. McKeay said if they wanted any fresh horses they could get them of Kaskiller.

Int 16. If he had obtained any horses from Kaskiller or any other Indian at that time would he, McKeay, have had to pay anything for them?

Ans. If he had gotten any he would have had to pay for them or ex-

changed other horses. They proposed to give us fresh horses for our own worn out ones, and on our return to give them back to us by paying them a reasonable compensation for keeping them, but we didn't need any and didn't get any.

Int. 17. You state that the Indians about the Dalles have always been friendly to the whites; how do you know that?

Ans. I never knew of their doing any harm to any one and they always tried to help.

Int. 18. State whether or not you do not make up your mind as to their friendliness by the manner in which they have treated you.

173 Ans. They have treated me just the same as they have treated everybody else.

Int. 19. State what relation, if any, you are by marriage to any of the Wasco tribe of Indians?

Ans. Not any; my wife is an Indian quadroon from British Columbia. I was married about 1840; I brought her here in 1849.

Int. 20. State what church, if any, you belong to?

(Objection No. 2. Objected to by plaintiff's counsel as irrelevant and immaterial.)

Ans. I belong to the Catholic church—I have been connected with it all my life.

Int. 21. Do you recollect the number of Indians camped on the space of land between the mouth of Mill Creek and the buildings occupied by the Methodist society, in January, 1848?

Ans. There were several camps on the ground, scattered around on the ground.

R.-examined by pl'ff's attorney:

Int 22. State whether or not the Wascopum Indians included the Indians who formerly resided about the Dalles?

Ans. They did.

Int. 23. State whether or not the religious opinions of white people made any difference with the treatment by the Indians?

Ans. Not that I know.

174 Int. 24. State what nationality you are?

Ans. French Canadian—I came to Oregon in 1838.

his
EDWARD + CRATE.
mark.

Deposition of Edward Crate taken by consent of the parties above-named subject to legal objections as to time.

STATE OF OREGON,
Wasco County, ss:

I, James A. Campbell, a United States commissioner, duly appointed and qualified as such, do hereby certify that the above and foregoing deposition of Edward Crate was taken before me at Dalles City, Wasco County, Oregon, on this the 27th day of March, A. D. 1879, between the hours of ten o'clock a. m. and four o'clock p. m. of said day, and that said deposition was reduced to writing by George Watkins; that before proceeding to examine the said witness, Edward Crate, he was duly sworn by me to tell the truth, the whole truth, and nothing but the truth; that the said deposition, after being committed to writing, was carefully read to him, the said witness, and then subscribed by him.

In witness, whereof I have hereunto set my hand this 28th day of March, A. D. 1879, at Dalles City, Wasco County, State of Oregon.

J. A. CAMPBELL,
U. S. Commissioner.

175 This indenture, made the twenty-third day of November, in the year of our Lord one thousand eight hundred and fifty-eight, between Rev'd William (otherwise Elkaneh) Walker and Rev'd Cushing Ells, attorneys in fact for the American Board of Commissioners for Foreign Missions (as will appear from a certain instrument of writing, bearing date 28th day of February, 1852), residents of the county of Washington and Territory of Oregon, of the first part, and Morton M. McCarver and Samuel L. White, of the Territory aforesaid, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar, good and lawful money of the United States of America, to them in hand paid by the said parties of the second part, together with other valuable considerations, before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have remised, released, and quitclaimed, and by these presents do remise, release, and quit claim unto the said party of the second part, and to their heirs and assigns, forever, all right, title, claim, interest, and demand of, in, and to a certain tract or parcel of land lying, being, and situated in the county of Wasco, in the Territory of Oregon, and known as part of the Dalles Mission Claim in said county; it being all and singular that part of said claim not included in the military res-
176 ervation, as may appear upon a final and official survey of the same by the proper officers of the Government of the United States, be the same more or less, which tract of land was confirmed by act of Congress, bearing date the fourteenth day of August, anno Domini eighteen hundred and forty-eight, granting certain lands to the several religious societies occupying mission stations in Oregon Territory; together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest of the said board in the property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part of, in, or to the above described premises and every part and parcel thereof, with the appurtenances. To have and to hold, all and singular, the above-mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs and assigns, forever.

In witness whereof the said parties of the first part have hereunto set their hands and seal the day and year first above written.

ELKANEH WALKER, [SEAL.]
CUSHING EELLS, [SEAL.]
Attorneys in fact for American Foreign Board of Missions.

Signed, sealed, and delivered in presence of—
N. E. GOODELL.
177 EDWIN EELLS.

The words, "together with other valuable considerations," between the tenth and eleventh lines, were interlined before the signing and delivery of these presents.

COUNTY OF WASHINGTON,
Territory of Oregon, ss:

Be it remembered that on this twenty-third day of November, A. D. 1858, personally appeared before me Rev'd William (otherwise Elkaneh) Walker, and Rev'd Cushing Elles, attorneys in fact for the American

Board of Commissioners for Foreign Missions, personally known to me to be the same persons described in and who executed the within instrument, who jointly and severally acknowledged the same to be their free act and deed, in their several and joint capacities, as the attorneys in fact for the said corporation.

Before me,

GEORGE W. FERNSIDE,
Justice of the Peace in and for said County.

TERRITORY OF OREGON,
Washington County, ss:

I, William P. Doland, cl'k of the U. S. district court, hereby certify that George W. Fernside, whose name appears to the foregoing acknowledgment, is, and was at the time of issuing the foregoing ac-
178 knowledgment, an acting justice of the peace in and for said county of Washington and Territory aforesaid.

Witness W. P. Doland, clerk U. S. district , and the seal of said court hereunto affixed, this 25th day of November, A. D. 1858.

[SEAL.]

W. P. DOLAND, *Clk*,
By W. D. HORE, *Deputy.*

TERRITORY OF OREGON,
Multnomah County, ss:

I, William P. Doland, clerk of the U. S. district court, hereby certify that George W. Fernside, whose name appears to the foregoing acknowledgment, is, and was at the time of issuing the foregoing acknowledgment, an acting justice of the peace in and for the county of Washington, of which Washington is included in the 2nd judicial district and Territory aforesaid.

Witness W. P. Doland, cl'k district *district* court 2nd judicial district, and the seal of said court hereunto affixed, this 26th day of November, A. D. 1858.

[SEAL.]

W. P. DOLAND,
Clerk of District Court.

179 STATE OF OREGON,
County of Wasco, ss:

I, R. F. Gibons, county clerk in and for said Wasco County, and ex-officio clerk of the county court of the State of Oregon, for the county of Wasco, do hereby certify that I have compared the foregoing with the original entry in vol. "B" of Record of Deeds for said Wasco County, on pages 26, '7, '8 & 29, and that it is a true and correct transcript therefrom, and of the whole of said original, as the same appears of record at my office and in my custody.

In witness whereof I have hereunto set my hand and affixed the seal of said circuit court, this 11th day of June, A. D. 1879.

COUNTY COURT, WASCO COUNTY, STATE OF OREGON.]

180 D. L. H

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 7, 1879.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed copies, from pages one to sixty nine, both inclusive, are true and literal exemplifications from the files and records

of this office, of the following: 1st. Decision of U. S. surveyor-general of Oregon, dated February 2, 1861, in "The Dalles Missionary case." 2nd. Diagram "2," military reserves and Methodist mission claim of Fort Dalles, Oregon. 3rd. Letter from this office, dated February 1, 1872, to register and receiver at Walla Walla, Washington Territory. 4th. Letter dated March 5, 1872, from register and receiver at Walla Walla, Washington Territory, to this office. 5th. Notification, dated February 4, 1859, of Elkanah Walker and Cushing Eells, attorneys in fact for the American Board of Commissioners for Foreign Missions, for lands on the Walla Walla River, Washington Territory, known as Whitman's Station. 6th. Affidavit of H. H. Spalding, in support of said notification, with certificate of clerk. 7th. Affidavit of Elkanah Walker and Cushing Eells, in support of said notification, with certificate of clerk, followed by an endorsement.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL OF U. S. GEN'L LAND OFFICE.]

J. A. WILLIAMSON,
Commissioner of General Land Office.

181 THE DALLES MISSION CASE.

The Missionary Society of the Methodist Episcopal Church claim a tract of six hundred and forty acres of land at the Dalles, in Wasco County, under an act of Congress entitled "An Act to establish the Territorial Government of Oregon, approved the 14th day of August, 1848," in which it is provided "that the title to the lands, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes of said Territory, together with the improvements thereon, be confirmed and established in the several religious societies to which said missionary stations respectively belong.

The claim of said society to the tract above mentioned is contested by Dalles City, an incorporated town, claiming under the act of Congress of 1844, known as "The town-site law;" by Windsor D. Bigelow, a claimant of a part of the tract, by virtue of the act of 27th September, 1850, called the Donation Law; and by Victor Trevitt, as a settler, under the pre-emption law of 1841.

By a notice through the public journals, as also by special notices addressed to the parties in interest, respectively, this case was set for hearing on the 16th day of February, 1860, at Dalles City. The mission was represented by Messrs. Williams & Gibbs; Dalles City by
182 Messrs. Bridges & Gates; Windsor D. Bigelow by Col. Kelly; and Victor Trevitt by W. H. Farrar, esq., their attorneys respectively. The case having been continued from time to time, until late in October, it is presumed that all the evidence deemed important by either party has been presented.

I regret that after the repeated intimations of its propriety, the claimants have failed to present documentary evidence, showing historically the date and origin of the establishment, the authority under which it was instituted, and its condition both at the time of its transfer and up to the date of the act making the grant.

It appears that prior to the year 1840, there were two distinct Protestant missionary societies having seperate stations in Oregon. "The American Board of Commissioners for Foreign Missions," incorporated by the laws of Massachusetts, having its principal seat of operations at

Boston, which had one station upon the Spakane, with the Rev'd Messrs. Eels and Walker in charge; one at "Clear Water," H. H. Spalding in charge; and one at "Wailatpu," Dr. Marcus Whitman in charge; and also "The Missionary Society of the Methodist Episcopal Church," incorporated by the laws of New York, having its location in New York City, and having several stations in Oregon, amongst others, one at Salem, in Marion County, Rev. Jason Lee in charge, and one at
183 Wascopham, or Dalles of the Columbia, Messrs. Perkins and Brewer in charge, succeeded in 1844 by Rev. A. F. Waller.

Prior to 1840, buildings were erected at the Dalles station, improvements were made, and missionary operations carried on regularly, and so continued up to 1847. In 1843, the Society having become dissatisfied with the management and condition of the secular affairs in Oregon, sent out the Rev. George Geary, as "Financial Agent," who arrived in May, 1844. Whatever his instructions may have been, he understood it to be his duty to dispose of all their property, consisting mainly of farms, and herds of horses and cattle. This was readily done, as they were principally sold, or in some manner disposed of to members, or other persons connected with the mission. This appears to have been in pursuance of some policy which had been adopted either at home or by Mr. Geary, having for its object the entire abolition of landed interest, and which most likely had its foundation as well in view of the past management of the property, as in the rapidly increasing population from the States, rendering it inconvenient and difficult as a society to hold large tracts, saying nothing of their probable loss.

In the spring of 1847, nearly all the personal property of the mission at the Dalles was disposed of to Dr. Locey and others, and negotiations between Mr. Geary and Dr. Whitman had been for some time
184 pending for the transfer of the Dalles station to the American Board, when in July Rev. William Roberts arrived in Oregon, as superintendent and financial agent, superseding Mr. Geary, who in the same month returned to the Atlantic States, leaving the negotiations still pending.

On August following Dr. Whitman, with his nephew, Perrin B. Whitman, visited the Willamette, as is supposed, to either complete the arrangement for the transfer, or terminate the negotiations, and make a purchase of a claim in the Willamette. Anticipating a rapid change in the population of the country he seems to have desired a location advantageous as well for the dis'emination of religious instructions to the white, as to the Indian population, and alike valuable for its commercial as for its agricultural advantages; and to this end, during the latter days of the month of August, or first of September, the arrangement for the transfer was completed. Thus far there appears to be but a single living witness of the agreement, although several persons appear by some means to have become familiar with it in general terms. The Rev. William Roberts, who made the arrangement with Dr. Whitman, states it thus: "The mission station was placed in his (Dr. Whitman's) hands, on the condition that it should be occupied by them
185 for the use and benefit of the Indians residing in that place and its vicinity. For the movable property they were to pay such an amount as might mutually be agreed upon. For the station itself, they were to give no compensation, the understanding being all the while, that the mission was to be maintained by them, for the use and benefit of the Indians in a religious point of view, which included the education of the children; the instruction of the Indian parents in all matters pertaining to their religious interests and temporal well being. The

reasons for the transfer without compensation were briefly these. The Methodist mission had but one station east of the Cascades and more work in the Willamette than the' could well attend to. The American board had three stations in the upper country, and it was quite desirable for them to have the Dalles also, at it was the "Key" to the entire region, and as an act of Christian regard and confidence the transfer was thus made." For the movable property, consisting of a large canoe, farming utensils, fanning-mill, and some wheat and other articles not stated by the witness, Dr. Whitman gave a draft for a little over $600 upon the American board, which was never presented for payment, and was given up on the retransfer of the mission. The buildings, located within about three-quarters of a mile of the Columbia River, consisted
186 of one two-story dwelling-house, blacksmith shop, barn, and perhap ssome other small buildings, and stood in the southeast corner of an enclosure variously estimated to contain from thirty to seventy-five acres, with probably one-half of it in cultivation. Ledges of rock, presenting from without the appearance of a high wall or breastwork to the improvements, constituted the enclosure upon the north; elsewhere it appears to have consisted mainly of ditches and picketing. Below and north of the improvements, and between them and the "Landing," was the Indian village and camping ground. The "Landing" was nothing more than a space in the rocky shores of the river.

The arrangement for the transfer having been agreed upon, Dr. Whitman and his nephew repaired to the Dalles about the first of September, and received possession; the boats that took them up, bringing the Methodist missionaries and their families down. Perrin Whitman, a lad of about 17 years of age, was put in possession, with instructions to sow some wheat, while Dr. Whitman returned home to "Wailatpu" intending to remove to the Dalles in the spring following. Some time in October a Mr. Hinman, with his family, joined Perrin Whitman, in the employ of Dr. Whitman, as a farmer, profess-
187 ing to have been employed to attend to the secular affairs of the station.

On the 27th of November, 1847, Dr. Whitman was murdered at "Wailatpu," and in December Hinman and young Whitman became alarmed and fled for the Willamette Valley, but meeting the volunteers at "Wind Mountain," Hinman returned, opened the doors, and gave the volunteers possession of the building. About the last of December he removed everything belonging to the American board to the Willamette, even to the doors and windows. Prior to this time, the Methodists had removed everything that belonged to them. The volunteers remained in possession until the spring of 1848, when, with the exception of ten or twelve men who were left at the Dalles to guard some government property, they were withdrawn from the country. The Indians having been chastised, and peace and quiet restored, and they were withdrawn early in the summer, Col. H. A. G. Lee, in command of the volunteers, acting superintendant of Indian Affairs, on the 15th day of June, 1848, at the Dalles, addressed a note to Rev. Blanchett, Catholic priest residing at Walla Walla, advising against missionary labor east of the mountains. And on the 24th of same month a communication addressed to somebody, perhaps Gov. Abernathy, was written by Lee, as superintendent of Indian affairs, and on the 13th of July, pub-
188 lished in the "Spectator," to which was attached a paragraph advising all missionaries against exposing themselves to the fate of Dr. Whitman. At the time these letters were written, the Protestant missionaries had all left the country east of the Cascades.

On the 14th of August, 1848, the act was passed making the grant, news of which reached Oregon about the last of February, 1849. In February, and it is presumed immediately upon the reception of the news of the grant having been made, Messrs. Eels & Walker, acting on behalf of the American board, retransfered the station. The retransfer was in writing, I quote its language so far as relates to the matter at issue: "We propose that it be retransfer'ed to the Oregon Mission of the Methodist Episcopal Church, in the same manner in which it was received by the Oregon Mission of the American Board of Commissioners for Foreign Missions. Any articles of property of the station, whether movable, or otherwise, which have been destroyed by the Oregon troops, Indians, or by other persons, we would prefer not to be held responsible for. If it should be necessary to make use of the name of the mission or board in business transactions with the government for the recovery of property destroyed, we perceive no reason why it may not be done."

In June, 1850, Mr. Roberts, with Mr. Waller and some others, surveyed and marked out a tract of 640 acres of land at the Dalles,
189 claiming it on behalf of the Methodist Society under said act of the 14th of August, 1848, which is the same now claimed and represented upon diagram No, 1.

In the same year they recorded their claim in Clackamas County; and subsequently upon the organization of Wasco County recorded it there; and in 1854 they filed the formal notification and affidavits with the surveyor-general of Oregon. In the spring of 1850, a U. S. military post was established at the Dalles, and a considerable amount of the land subsequently sureyed by the Methodists, was included in the military reserve. In 1854 or '55, Maj. Raines so far investigated the validity of the Methodist claim to the land included within the reserve as to recognize it, and, with the consent of the agent of the Methodists, recommended the payment of twenty thousand dollars as the estimated value of the land by them claimed and included in the reserve. This report was concurred in by the Secretary of War, who recommended to the Committee on Military Affairs of the House its payment. The society has followed up this report with continuous efforts until, on the 6th day of July last, an appropriation was made for its payment.

By a deed bearing date the 3d November, 1858, Messrs. Eels & Walker, as attorneys in fact of the American board, "released
190 and quit claimed" the interest of the board in the land granted to Messrs. McCarver & White, while the American board at home, by deed bearing date the 28th day of February, 1859, released and quitclaimed the same property to the Methodist society, declaring in the deed that the object was to "quiet doubts."

Len'thy arguments have been filed by counsel on both sides. On the part of the Methodists, it is claimed that when the missionaries left the station it was with the intention of returning to occupy it as a missionary station amongst the Indians, and that they carried out this intention as early as it was safe and practicable. The evidence, as well as the argument on the part of the claimants, presents their claim in their own name, as also in that of the American board. But each claim must stand or fall as the law and evidence shall be applicable under an independent mission.

The first question to be considered is, was there anything in the abandonment or terms of the transfer indicating either the right or intention on the part of the Methodist missionaries to return and reoccupy the lands? Much stress has been laid upon the language in which the

witness clothes the trasfer, "upon the express condition that the station should be occupied as a mission," &c. Taking the testimony alto-
191 gether, however, and it shows that these words are his own, used to convey his present idea of the legal effect of the transfer; Whitman only gave it to be understood that it was his intention to carry on missionary operations at the Dalles, and as a mere act of Christian regard and confidence; the station was abandoned and Dr. Whitman allowed to occupy it Upon a failure to comply with any such understanding or undertaking, there was no condition of forfeiture or re-entry contained in the transfer. Nor is the slightest evidence tending to show that either party designed it should be so, or so understood. And considering that there was no legal right to the property, that each occupant became the tenant at sufferance of the Indians; that there was no remedy to enforce either compliance or forfeiture, it was not in the nature of things that any such conditional transfer could have been made.

In the nature and terms of the transfer, we find no evidence of either the right or intention on the part of the Methodists of returning to occupy the station. This view is supported by the surrounding circumstances and declarations of the parties. Everything of a personal or movable character had been disposed of or removed. The possession of the improvements had been surrendered irrevocably. The families were removed and permanently located upon claims else-
192 where. The missionaries declared that they had abandoned, and were not going back, and the nature of the business which had called them away exclude the idea of their returning to occupy the station.

Dr. Whitman was murdered in Nov., 1847, and in December following, Hinman and young Whitman, who were left by him in possession, having abandoned the station, it became apparent that it was impossible for Whitman to carry on missionary operations. If there existed any right or intention to return and occupy on that account, a case was presented for its manifestation; yet nothing is heard or seen on the part of the missionaries of the Methodists to indicate such right or intention until February or March, 1849, when the retransfer was made, and when news had been received of the grant of 640 acres of

In the deposition of Mr. Parrish, in an early stage of the proceedings in relation to this claim, he testifies that they (the misssionaries, of which he was one), always claimed the legal right to the Dalles Station. This was an "ex parte" affidavit, and perhaps not drawn up in the sense in which he intended it should be. But the testimony of Mr. Roberts, who transacted the business, ought, if found to conflict, to outweigh that of Mr. Parrish. It is clear and decisive upon the point of
193 either the right or intention of returning to occupy until the retransfer, and sustains the construction I have put upon the terms of the transfer. This question was propounded to him: "Did you claim that station, or were you in the actual occupancy of it as a Methodist missionary station between those dates" (the date of the transfer, September, 1847, and the date of retransfer, February, 1849). His reply is this: "Whatever may be the legal meaning of an actual occupancy, in common acceptation, I did not claim it and did not occupy it."

In answer to another question, explanatory of an answer which tended to excuse an occupancy during the war, and prior to 14th August, 1848, on account of Lee's proclamation interdicting missionary operations, he says: "I wish to be understood as saying that after the retransfer of the station I was in part prevented as referred to."

The language of the transfer under the light shed upon it by the witness who made it, the surrounding circumstances, the declarations and admissions of the parties, settle the question beyond doubt that there never was a right or an intention to re-occupy the Dalles Station by the Methodist society until February, 1849, long after the grant was made, and therefore all the excuse by them for not occupying, either
194 because of Indian hostilities, Lee's order advising against missionary operations, or the occupancy of the station by the volunteers during that time, can only be regarded as an afterthought. And so in reference to the numerous excuses offered for non-occupancy from February, 1849, till June, 1850, such as Indian hostilities, occupancy by the United States troops, as well as the continued efforts to show claim of property by preaching to the Indians, surveying the claim, recording it, and filing notification; they do not prove the slightest intention or right to occupy on the 14th day of August, 1848. It is claimed that the right of the Methodists has been recognized by the government in various ways—by the military, by the Secretary of War, by committees of Congress, and finally by an appropriation of $20,000 to pay for land included in the reserve. As between the government and the society, the' might perhaps plead executive and legislative recognition, but I apprehend that Congress cannot legally legislate away individuals' rights. If the contestants have any rights, they were vested prior to either the action of Secretary of War or of Congress, and therefore cannot be affected by their acts.

From the foregoing considerations I conclude:

1st. That the Missionary Society of the Methodist Episcopal Church, in September, 1847, irrevocably abandoned the possession of the
195 Dalles Station.

2nd. That they had no right or intention to re-occupy it until after the re-transfer to them by the American board, in February, 1849.

3rd. That the existence of Indian hostilities or military occupancy of the station between the transfer and the re-transfer, cannot be received as an excuse for non-occupancy, in the absence of either the right or intention to occupy; and

4th. That as the Methodist society had no rights in the lands in controversy on the 14th day of August, 1848, and as nothing alleged to have been done afterwards by either the society or the government could reinstate them, that therefore they are not entitled to the land claimed under said act.

I come now to consider the claim of the "American Board of Commissioners for Foreign Missions" to the land first claimed by the Methodist society.

It will be remembered that these societies do not contest each other's rights, but that the Methodist society having procured certain relinquishments from the American board, seek to substantiate that claim in order that the title shall inure to their own benefit.

This claim is based on the transfer to the American board in September, 1847, before referred to. The whole business relating to the
196 transfer on the one side was conducted exclusively by Dr. Marcus Whitman, while in charge of and occupying "Wailatpu" as a missionary station. There is no evidence that his action was authorized by the American board or ever recognized by it until a very late day, and then only to the extent of enabling the Methodist society to obtain the land under the act of 1848.

A question has been raised with reference to the object and intention of Dr. Whitman in obtaining the premises. On the part of the claim-

ants it is contended that "all" the property, both real and personal, including the land claim, was obtained exclusively for the use and benefit of the American board; while by the contestants it is insisted that the main object had in view by Dr. Whitman was a location suitable for, and with the intention of making it a home for himself and nephew, Perrin B. Whitman. It has been intimated that to the Doctor, any other motive than that which was manifested in the formal parts of the transfer, would be to do gross injustice to the memory of the martyred and lamented dead. I see nothing, however, dishonorable in the motive attributed to him. He had visited and associated more or less with his Methodist brethren of the Willamette, and saw and learned the changes that had taken place in the last two or three years.

197 The Indians that, but a short time before had occupied almost exclusively the attention of the missionaries, had given away before the rapid increase of population. The large farms, and cattle, belonging to the Methodist society, had been divided up and disposed of to individual owners. The missionary operations had undergone an almost entire change, so much so, that there were few places of preaching where the Indians occupied even a near seat in the congregation. There was quite a prospect of the early settlement of the whole country, which was pressing the old residents to a selection of lands for permanent homes, as well as the society to the disposition of their large tracts that had become difficult to with'old from settlement; under such circumstances, strengthened, no doubt, by the news of prospective immigration, he looked forward to an early settlement of the "Upper Country." It was therefore natural, as it was honorable, that he should have, after so many years of absence from the comforts of civilized life, directed his attention in some degree to providing himself with the comforts of a home, as had already been done by his early brethern of the Methodist Mission. Accordingly he repeatedly, when conversing in reference to the Dalles Station, alluded to it in a commercial point of view

198 as "the key to the upper country," if it should ever settle. He consulted his nephew, his adopted son, and promised him a part of the claim. And when the arrangement was agreed upon, no mention was made of the transfer of land or the claim to land, because it was the intention to abandon the possession without consideration; and Dr. Whitman might make it an individual claim without the infringing upon his obligations to the American board. The history of missionary operations of that day shows that it was not contemplated that a grant of land would ever be made to any of the missionary societies. The Methodist missionarys acted upon this view of the matter, and doubtless Dr. Whitman was led to the same conclusion.

From all the circumstances I think it may reasonably be inferred that while Dr. Whitman intended to teach and preach to the Indians at the Dalles for the brief space that it was then likely they would remain undisturbed by white settlements, at the same time he intended to make an individual claim to the land for himself and nephew. However this may be, it is contended that the American board, were on the 14th day of August, 1848, substantially occupying the station, as in the act contemplated. By the counsel for the claimants, the then occupancy

199 is defined to mean "taking and holding property in such a way as to indicate an intention to appropriate or acquire right to it, such as "buildings," "fences," designating boundaries with a view of reducing it to ownership.

As a general term applied to individuals, uncontrolled by legislative requirements, there might be no objection to that definition of the term;

under the earlier pre-emption laws great latitude of construction was allowed, always having reference to the spirit of the law. But even in those cases it was requisite that the settler, though not required personally to reside upon the land, should have direct personal connection with the performance of the acts constituting occupancy. In the case now under consideration, the provisions of law making the grant require a totally different kind of occupancy. The language used is "occupancy as a missionary station amongst the Indian tribes, &c." In view of the history of missionary operations amongst the Indians, I think the law contemplated a place or station with one resident missionary, at least, duly authorized by the society to impart scriptural knowledge. The land to the extent of such buildings and improvements as were legitimate to the calling of a missionary, would be regarded as within missionary occupancy while so used.

200 At what time must the occupancy have existed? The act was passed 14th August, 1848. The language used as to time is "now" "now occupied." But this does not require religious services "eo instanti." The proper and fair interpretation is, that upon the day of the passage of the act, there should have been an actual living mission in course of operation, so that the spiritual wants of the Indians might have been ministered to, as occasion required. Congress in this, as in similar cases, determined upon the period when it must have been in operation, and that was on the 14th day of August, 1848.

It is beyond question that, either on his own behalf or that of the American board, Dr. Whitman intended to remove to the Dalles in the spring after the transfer of the station, and young Whitman was left to keep possession of the premises, and was subsequently joined by Hinman in the capacity of a farmer in the employ of Dr. Whitman. If we look to Dr. Whitman to have carried on missionary operations at the Dalles, there existed no possibility of it, after the 27th of November, 1847. If we look to young Whitman and Hinman, we find they could only be considered as his personal employees, and by his death their engagement ceased. They were wholly unknown to the American board, and as soon as they received the news of the Whitman massacre they fled for the Willamette. Neither of them were ministers or mission-

201 aries, although young Whitman interpreted on two or three occasions for Hinman to hold religious conversation with the Indians. Young Whitman, while in his infancy, had left the abodes of civilization to take his chances among the Indians, and though the adopted son of the doctor, upon whose death he was left wholly unprovided for, yet there is not evidence that the board ever recognized him, or otherwise treated him than as a perfect stranger. They cannot now be permitted to regard him as having acted in the responsible position of a missionary, merely for the purpose of obtaining the land.

The continued existence of Indian hostilities from December, 1847, until after the passage of the law in 1848, is set up by the American board as a reason why they did not occupy the station during that period. It is well established that the seat of war was over one hundred and forty miles from the Dalles, and that the Indians were pursued and chastised. Nearly all of the witnesses who knew anything of it, state that during that period it would have been safe to have occupied the Dalles station. It was peaceably surrendered to the volunteers in 1847. Lee's proclamation was not issued until about one month prior to the passage of the law, and while the American board could have

202 known nothing of the condition of things in Oregon, it is quite

clear that they had not at any time after a knowledge of Whitman's death the remotest intention of occupying the Dalles station. Admitting that Dr. Whit obtained the station for the purpose of removing to it in the spring, and that if he had carried out these intentions he would, as a missionary of the American board, have been on the 14th day of August, 1848, carrying on missionary operations at the Dalles station, and that he was prevented from doing so by having been massa'red by the Indians, then, under the provisions of the law, can we substitute the "intention" for the *the* actual occupancy? In most cases where the existence of Indian hostilities have been regarded as a sufficient excuse for the non-performance of an act contemplated by the terms of the grant, it has been when there was a vested right with a condition subsequent, either to perfect title or to prevent forfeiture. This is understood to have been the nature of the Fremont case, cited by the counsel for the claimants. There Alvarado, Fremont's grantor, received a grant from the Government of Mexico, with the condition that he should build a house within a year, and solicit a proper officer to deliver him judicial possession and survey it. The Supreme
203 Court of the United States decided, that the right was vested at the time of the grant, and that Indian hostilities, or a state of war, might be pleaded in excuse for non-performance of the condition. In this case the grant was by Congress of a present investiture of title, without any conditions or provisions for those who from misfortune or otherwise were not carrying on missionary operations at that time. Provision was only made for the "then" existing establishments for actual, living missions with duly accredited missionaries, operating in a manner and at such periods as was usual at such establishments.

The department, however, has, at least in cases where there are no conflicting claims, given a more enlarged construction, as I am informed, and, if so, I am not at liberty to follow any other. Therefore, if there are no other objections, the intention to remove and occupy the station might be regarded as for the actual occupancy. But the contestants allege that the American board have claimed and obtained a tract of 640 acres, embracing "Wailatpu station," where Dr. Whitman resided at the time of his death, upon the same ground alleged in this case: that had it not been for his death he would have continued his
204 occupancy, and thereby entitled the American board to the land under the act of 1848. If this is true, there being no record evidence of the fact in this office, then I think the board is estopped from claiming that Dr. Whitman intended to have removed to "Wascopham." He could not have occupied both places at the same time. They have appropriately made choice of "Wailatpu," and should be content therewith.

Should it finally, however, be determined that there was "a missionary occupancy" upon some part of the lands claimed, the question will then arise, what quantity and boundaries shall be allowed?

I have carefully examined the language of this act, and compared it with many of the grants of pre-emption and donation, and find in them and essential difference. Those acts made original grants of specified quantities of land, founded upon occupancy and improvements not necessarily coextensive with the amount granted.

In this case the act is but "confirmatory" of something previously possessed as a matter of fact to be established, subject, of course, like the others, to the maximum limitation. In nearly all the acts making grant of pre-emption right or donation the language of the grant is to this effect, "one-quarter section, to include improvements." In

205 the pre-emption act of 1830, the language used is, "any number of acres not exceeding one hundred and sixty." In the act of the 14th of August, 1848, the words of limitation are supported by very different language making the grant. Instead of the words "any number of acres" (and in very nearly the same position with reference to the clause of maximum limitation), will be found the words "now occupied as missionary stations." In the one, grant is of "any number of acres," while in the other it is of the "land occupied," both subject to the maximum limitation of one hundred and sixty, and six hundred and forty acres.

There were good reasons why Congress should thus deviate from the ordinary language used in making grants to settlers. In reference to the latter, the Indian title was supposed to have been extinguished, or, as in case of Oregon, virtually not being an Indian country, because generally where there were settlements to be covered by the grants, the Indians had given back. But the missionary occupation under said act of 1848, is required to have been among Indian tribes, and presumed to have been established, and in existence by their consent and for their benefit, surrounded by and adjacent to Indian villages and camp grounds.

206 Therefore the missionary occupancy contemplated in the act could only have existed to the extent of Indian permission for missionary use, and to that extent only they had a possessory right, liable to confirmation.

This view is warranted not only by the words of the grant, and by the relation existing between the Indians and the missionaries, but Congress respecting the Indian title, did in the section preceeding that making the grant, declare that "nothing in this act contained shall be construed to impair the rights of persons or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty."

Following the construction of the act, which Congress has declared it shall receive, I think the grant, if it exists at all, is confined to the quantity of land occupied, not exceeding 640 acres, as represented upon diagram No. 2. As the Commissioner has already intimated that it is understood that the provision of law grants 640 acres of land at each seperate and distinct station, I have considered the case in that light and, admitting the existence of missionary operations to have been established, does the survey made in 1850, whether under the one or the other of the societies, control the government in the location of this claim? The claimants contend that it does, because it includes the

207 lands occupied, and because of its conforming to former understandings of where the boundary should be, and also, because the grantee of a general grant possesses the right to survey and define and reduce it to specific boundaries. If the survey referred to does include lands occupied by them, and no less a tract in a square form would include them, there would be some plausibility in the pretension. But what are the facts? The landing, it is contended, was occupied by the Methodists. This is the "landing" at the Portage around the "Grand Dalles," of the Columbia. It is a natural highway used by the Indians from time immemorial, by our early voyagers, by the Hudson Bay Company, by missionaries of all classes, as well as by American immigrants. Its exclusive use by Christian missionaries in the very door of those by whose permission they were sojourning in the country is not very consistent, nor do the facts justify any such conclusion.

In reference to previously established boundaries, the evidence is op-

posed to the existence of any; and any understanding as to where it should be, amounts to nothing in this case.

To sustain and uphold the claimants in their right to survey and define a general grant, the decisions of the Supreme Court of the
208 United States in the case of Rutherford against Green's heirs, 2 Wheaton, 196, and Fremont against the United States, 17 Howard, 542, are referred to, in which the court says:

"It recognizes as a general principal of justice and municipal law that such grant for *for* a certain quantity of land by the government to be afterwards surveyed and laid off within a certain territory, *vests* in the grantee a present and immediate interest. The general gift becomes a particular gift when the survey is made."

The circumstances in Green's case, were these: The legislature of North Carolina granted to General Green 25,000 acres of land, within a certain district of country, and provided for its *been* surveyed and laid off by commissioners. It was the survey by the government which the court decided to have reduced the general to a particular gift.

In Fremont's case, already referred to, the land was patented by the authorities of Mexico, with a condition subsequent, that the grantee, Alvarado, should, amongst other things, within a year, solicit a judicial "possession and survey." Indian hostilities and a state of war prevented this being done, but the court decided that "under the Mexican Government the survey was to be made or approved by the
209 officers of the government, and the party was not at liberty to give what form it pleased to the grant * * *." "And the survey must now be made under the authority of the United States, and in the form and divisions prescribed by law for surveys in California, embracing the entire grant in one tract."

The principles established by the court in the cases cited, are diametrically opposed to the right of the claimant to give shape and *and* form to these claims. If determined that the claimants are entitled to 640 acres, and nothing shall appear but the improvements to indicate its location, the law and regulations of the government would seem to require that it should be surveyed in a square form, by lines running to the cardinal points, with the improvements in the centre. But it will be remembered that the lands north of the "bluff enclosure," were during missionary operations, and up to the time of the Indians being expelled by the government, occupied by Indian villages and camp grounds; such a survey would be in violation of the constructive provisions of the act, whether done by the government or by the claimant. The horses and cattle of the mission grazed up the prairies south of the improvements, and to that extent at least, tends to show an occupancy south rather than north of the enclosure.

Should a tract of 640 acres, located as I have now suggested,
210 be allowed, it may be worthy of consideration whether it should not be limited to the remainder, after deducting 353 acres, 1 rood and 28 poles, for which, upon the supposition that so much lay within the military reserve at Fort Dalles, the United States has by an act of 6th of July, 1860, made an appropriation of $20,000. Map No. 3, accompanying this opinion, represents a claim under a grant of 640 acres, as well as curtailed by the amount for which payment has been made.

It is contended that the appropriation of $20,000, before referred to, was intended to quiet and comprehend the whole claim of the society. I do not so understand it. The act has reference to the tract, as claimed by the society, within the reserve, as both, or was represented in 1854. From documents No. 1, 4, 6, & 7, furnished from the General Land Of-

fice, it appears that prior to 1855 Major Rains, supposed to be in command at the Dalles, or at least charged with an investigation of the mission claim, regarding it as valid, upon consideration, and by the consent of the agent of the society, recommended the payment of $20,000 as the value of the land thus included within the military reserve.

This report was endorsed by the Secretary of War so far as to recommend to Congress the payment of said sum, and these recommendations have been followed up by the Missionary Society of the Methodist Episcopal Church, until, through their efforts, Congress has made
211 the appropriations. It was the result of negotiations commenced under Maj. Rains, and the evidence excludes the idea of its having been considered a compensation for the full tract. The official map of the military reserve at the Dalles shows a change in its boundaries since the report of Maj. Rains, throwing off 56.85 acres in and adjacent to the N. W. ¼ of sec. 3, T. 1 N., R. 13 E., which amount having been compensated for, should not, under any circumstances, be included in any grant that may possibly be affirmed to either of said societies.

It remains to be considered what effect shall be given to the several relinquishments of the American board. Do they transfer titles or do they only show an intention to repudiate all claim to the land, under the act of 1848?

In 1849, Messrs Eels & Walker, on behalf of the American board, retransferred the station to the Missionary Society of the Methodist Episcopal Church, as they express it, in the same manner in which the American board had received it—not as a transfer of land, but as an abandonment of any claim to the station, and with authority not to recover land "in their name," but to use their name if necessary in a claim for damage done to property by Indians or volunteers.

The next transfer or relinquishment by the American board was made in November, 1858. At this time Eels & Walker, still acting as their agents, for a nominal consideration, the sum of "one dol-
212 lar," relinquished to McCarver & White a large amount of the tract now claimed; while the American board directly, in February, 1859, for a nominal consideration—one dollar—released to the Methodist board "the land and other property at the Dalles," expressly declaring "that this release being made to quiet doubts as to the title of the board of managers" (Methodist).

In view of the consideration expressed in each of the several relinquishments referred to, the actual value of the land released, over twenty thousand dollars, and the object of those relinquishments, as gathered from the instruments, it is quite clear that the American board and their agents made no pretence or claim to have so occupied the land as to have been entitled to it in virtue of the act of 1848, and executed the relinquishments as evidence of those facts.

Independant of the views expressed in the alternative, I conclude:

1. That the Dalles station, having been abandoned by the board of managers of the Methodist Missionary Society, in September, 1847, its occupancy by the American board as a missionary station depended upon the removal of Doctor Whitman from "Wailatpu" to, and occupancy of, the "Dalles station," in the spring of 1848, which was rendered impossible by his death in 1847.

213 2. That there is no evidence tending to show that, after a knowledge of the death of Dr. Whitman, in 1847, by the American or their agents, there existed any intention on their part to occupy the Dalles station.

3. That so far as Hinman and young Whitman could be regarded as

employees or agents of Dr. Whitman, that, though impelled to leave the premises thro' fear of Indian hostilities, their absence became voluntary from the time of the arrival of the volunteers and their disengagement from the employment of Whitman; and

4. That the American board did not at any time thereafter, and particularly on the 14th day of August, 1848, either occupy or set up a claim to the land in controversy; but, on the contrary, by their several relinquishments they have purposely estopped themselves from doing so, and therefore their claim should be rejected.

As to the rights of the several contestants, they will, of course, at the proper time, be investigated by the register and receiver, under the different acts of Congress under which they respectively claim.

Sur. General's Office, Oregon, February 2nd, 1861.

W. W. CHAPMAN,
Sur. Gen'l of Oregon.

(Here follows map marked page 214.)

215 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Febr'y 1st, 1872.

REGISTER and RECEIVER,
Walla Walla, W. T.

GENTLEMEN: Application has been made to this office by Hon. S. Garfield for the evidence of title for the Whitman mission claim in T. 6 & 7 N., R 35 E., but as the only evidence relating thereto on file in this office are copies, it is not deemed proper to take definitive action until we shall have been furnished with the original proofs, which you are instructed to forward promptly.

Very respectfully,

WILLIAM DRUMMOND,
Commissioner.

216 (Copy.)

LAND OFFICE,
Walla Walla, W. T., March 5th, 1872.

COMMISSIONER GENERAL LAND OFFICE.
Washington, D. C.:

SIR: Your letter "D," of Feb'y 1st, was received yesterday.

Herewith we forward the original proofs on file in this office, relative to the "Whitman mission claim," in Tps. 6 & 7 N., R 35 E.

Very respectfully, your obed't servt's,

WM. STEPHENS, *Register.*
ANDERSON COX, *Receiver.*

(Indorsed:) Land Office, Walla Walla, March 5, 1872. Register Stephens & Receiver Cox send original proofs in Whitman mission claim.

217 WASHINGTON, *Feb. 4th*, 1859.

Notification to the register and receiver of Washington Territory, at Olympia, on public land not yet surveyed pursuant to an act of Congress approved on the 14th day of August, 1848, organizing the territorial government of Oregon, and granting lands to certain missionary societies in said Territory, &c., we do hereby give notice that we claim six hundred and forty acres of land under said act, including

the ground occupied by the Waiilatpu or Whitman's Station buildings, and upon which they were erected in Walla Walla valley, and supposed to be situated in Walla Walla County, Washington Territory, and known as the Whitman's Station on the Walla Walla River.

ELKANAH WALKER,
CUSHING EELLS,
Attorneys in fact for the American Board of Commissioners for Foreign Missions.

TERRITORY OF OREGON,
County of Clackamas, ss:

On the fourth day of February, A. D. 1859, personally appeared before me, Thos. J. McCarver, a justice of the peace in and for the county and Territory aforesaid, H. H. Spaulding, a resident of Linn County, in said Territory of Oregon, who, being first duly sworn, says that he is
218 in nowise interested in the tract or tracts of land claimed as a donation by the American Board of Commissioners for Foreign Missions at Waiilatpu, claimed by them under an act of Congress approved on the 14th day of August, A. D. 1848, organizing the Territory of Oregon, and granting certain lands to the several missionary societies then rightfully occupying the same, &c., &c., and particularly described in notification No. hereunto annexed, and knows that the late Dr. Marcus Whitman and others, agents of said society, and who was engaged in the discharge of missionary duties, occupied said land or station for missionary purposes from the 1st of November, A. D. 1836, to the time of the massacre of said Whitman, on the 29th day of November, 1847, at which time said Whitman and others was massacred by the Indians, and that the said missionary station was rightfully occupied by said missionary society on the 14th day of August, A. D. 1848. This deponent knows these facts from having acted in conjunction with said Whitman as a missionary among the Indian tribes in the vicinity of said station for more than eleven years previous to the 14th day of August, 1838; said society had valuable improvements on the said land during the time it was so occupied; said land is supposed to be situated in Walla Walla County, Washington Territory.

H. H. SPALDING.

219 Subscribed and sworn to before me this 4th day of February, A. D. 1859.

T. J. McCARVER,
Justice of the Peace.

STATE OF OREGON,
Clackamas County:

I, F. S. Holland, clerk of the circuit court for said county, do hereby certify that T. J. McCarver, before whom the foregoing affidavit was made, was at the time of taking and subscribing the same an acting justice of the peace in & for said county, and that his signature thereof is genuine.

In witness whereof I have herewith set my name and private seal (there being no official seal yet of said court yet provided) this 20th day of August, 1859.

[PRIVATE SEAL.] F. S. HOLLAND, *Clerk.*

TERRITORY OF OREGON,
County of Washington, ss:

On the sixteenth day of February, A. D. 1859, personally appeared

the ground occupied by the Waiilatpu or Whitman's Station buildings, and upon which they were erected in Walla Walla valley, and supposed to be situated in Walla Walla County, Washington Territory, and known as the Whitman's Station on the Walla Walla River.

ELKANAH WALKER,
CUSHING EELLS,
Attorneys in fact for the American Board of Commissioners for Foreign Missions.

TERRITORY OF OREGON,
County of Clackamas, ss:

On the fourth day of February, A. D. 1859, personally appeared before me, Thos. J. McCarver, a justice of the peace in and for the county and Territory aforesaid, H. H. Spaulding, a resident of Linn County, in said Territory of Oregon, who, being first duly sworn, says that he is
218 in nowise interested in the tract or tracts of land claimed as a donation by the American Board of Commissioners for Foreign Missions at Waiilatpu, claimed by them under an act of Congress approved on the 14th day of August, A. D. 1848, organizing the Territory of Oregon, and granting certain lands to the several missionary societies then rightfully occupying the same, &c., &c., and particularly described in notification No. hereunto annexed, and knows that the late Dr. Marcus Whitman and others, agents of said society, and who was engaged in the discharge of missionary duties, occupied said land or station for missionary purposes from the 1st of November, A. D. 1836, to the time of the massacre of said Whitman, on the 29th day of November, 1847, at which time said Whitman and others was massacred by the Indians, and that the said missionary station was rightfully occupied by said missionary society on the 14th day of August, A. D. 1848. This deponent knows these facts from having acted in conjunction with said Whitman as a missionary among the Indian tribes in the vicinity of said station for more than eleven years previous to the 14th day of August, 1838; said society had valuable improvements on the said land during the time it was so occupied; said land is supposed to be situated in Walla Walla County, Washington Territory.

H. H. SPALDING.

219 Subscribed and sworn to before me this 4th day of February, A. D. 1859.

T. J. McCARVER,
Justice of the Peace.

STATE OF OREGON,
Clackamas County:

I, F. S. Holland, clerk of the circuit court for said county, do hereby certify that T. J. McCarver, before whom the foregoing affidavit was made, was at the time of taking and subscribing the same an acting justice of the peace in & for said county, and that his signature thereof is genuine.

In witness whereof I have herewith set my name and private seal (there being no official seal yet of said court yet provided) this 20th day of August, 1859.

[PRIVATE SEAL.] F. S. HOLLAND, *Clerk.*

TERRITORY OF OREGON,
County of Washington, ss:

On the sixteenth day of February, A. D. 1859, personally appeared

before me, A. Hinman, a justice of the peace in and for the county and Territory aforesaid, Elkanah Walker & Cushing Eells, residents of Washington County, in said Territory of Oregon, who, being first duly sworn, say that they are in nowise interested in the tract or tracts of land claimed as a donation to the American Board of Commissioners
220 for Foreign Missions at Waiilatpu, claimed by them under an act of Congress passed 14th day of August, A. D. 1848, organizing the territorial government of Oregon and granting certain lands to the several religious societies then rightfully occupying the same, &c., &c., and particularly described in notification No. hereunto annexed, and knows that the late Dr. Marcus Whitman, and others, agents of said society, and who were engaged in the discharge of missionary duties, occupied said land or station for missionary purposes from the 1st of November, A. D. 1838, to the time of the massacre of said Whitman on the 29th day of November, 1847, at which time said Whitman and others were massacreed by the Indians, and that the said missionary station was rightfully occupied by said missionary society until the aforesaid massacre, and that the said missionary society was entitled to possession on the 14th day of August, A. D. 1848.

These deponents know these facts from having acted in conjunction with said Whitman as a missionary among the Indian tribes in the vicinity of said station for more than nine years previous to the 14th day of August, A. D. 1848, and that said society had valuable improvements on the said land during the time it was so occupied, and that said land is supposed to be situated in Walla Walla County, Washington Territory.

ELKANAH WALKER.
CUSHING EELLS.

221 Subscribed & sworn to before me on this 16th day of February, A. D. 1859.

ALANSON HINMAN,
Justice of the Peace.

TERRITORY OF OREGON,
Washington County, ss :

I, William P. Doland, clerk of the United States district court, 2nd judicial district, in and for the Territory aforesaid, hereby certify that Alanson Hinman, whoes name is subscribed to, and before whom the foregoing affidavit was taken, is, and was at the time of taking and subscribing the same, an acting justice of the peace in and for said county, and that his signature thereto is genuine.

Witness William P. Doland, clerk as aforesaid, by William D. Hare, his deputy, & the seal of said court hereunto affixed, at Hillsboro', this 18th day of February, A. D. 1859.

[L. S.] WILLIAM P. DOLAND, *Clerk*,
By WILLIAM D. HARE, *Deputy*.

(Endorsed:) Notification to 640 acres at Waiilutpu Station, Pres'n Mission, A. B. C. F. M., Walla Walla. Dated Feb'y 4, 1859. Also affidavit of Spaulding, Walker, and Eells.

222 DEFENDANT'S TESTIMONY.

223 D. W. F.

(In red ink:) Sent special plat to Com'r June 16, 1875.—H. E.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 29, 1875.

U. S. SURVEYOR-GENERAL,
Eugene City, Oregon:

SIR: I enclose herewith a copy of the decision of the Hon. Secretary of the Interior of the 15th inst., in the matter of the claim of the Missionary Society of the Methodist Episcopal Church to certain land at the Dalles of the Columbia River, in Wasco County, Oregon, which said decision reverses the decision of this office, dated Feb'y 7, 1863, and that of your office, dated Feb'y 2d, 1861, and awards to said society so much of the land included in the survey of 1850 as shown on map 1, which accompanies the report from your office, less the three hundred and seventy-three and a fraction acres included in the military reserve paid for by Congress.

You will please notify all parties interested of the purport of said decision, and furnish this and the local office of the district in which the claim is situated with a certified diagram of the claim of said society as confirmed by the decision of the Hon. Secretary.

Very respectfully,
(Signed) S. S. BURDETT,
Commissioner.

224 OFFICE OF THE SURVEYOR-GENERAL OF OREGON,
Portland, Oct. 28, 1879.

I, J. C. Tolman, surveyor-general of Oregon, do hereby certify, that I have compared the foregoing copy of the letter of instructions of the Commissioner of the General Land Office to the S. U. surveyor-general of Oregon with the original letter now on file in my office, and the same is a true copy there of, and of the endorsements on the face thereof, except some printer's matter at the top of said original, not effecting the matter in the body of the letter.

[SURVEYOR-GENERAL'S OFFICE, OREGON.] JAMES C. TOLMAN,
Surveyor-General of Oregon.

(Endorsed:) Certified copy of letter from Secretary of Interior to surveyor gen'l of O'g'n, March 29, 1875, to furnish Interior Department certified diagr ms of the claim of said society, as confirmed by decision of the Hon. Secretary, March 15, 1875.

The within copy of said letter may be admitted as evidence in the causes submitted on the 16th of Oct. in the circuit court of the U. S., for the dist. of Oregon, to wit, Dalles City vs. Missionary Society of the M. E. Church, and the other causes also tried.

Portland, Oregon, Oct. 31, 1879.

J. C. CARTWRIGHT,
Att'y for Defendant.
JAMES K. KELLY,
Pl'ff's Att'y.

225 DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 15, 1875.

SIR: I have considered the claim of the Missionary Society of the Methodist Episcopal Church to certain land at the Dalles of the Columbia River, in Wasco County, Oregon, as a mission station, under the act of August 14th, 1848, organizing the Territorial government of Ore-

gon (9 Stats., 323), appealed by said society from the adverse decision of your office of Feb. 7th, 1863.

The case is very voluminous. It has been before the departments and Congress since 1853, and a proper understanding of it necessitates a reference to its origin and history.

This society, a duly organized corporation under the laws of New York, established the station then known as "Wascopam" in 1836. In 1840 it was in a prosperous condition, having a church, dwelling-house, barns, and other improvements, and a farm opened up and under cultivation.

This and the three stations of the American board, organized under the laws of Massachusetts, at "Wailatpu," "Clear Water," and "Chinoma-Rain," on the Spokane, were the earliest white settlements in Eastern Oregon. They induced, and were the nuclei around which gathered, the flood of emigration from the States that opened up that section, overwhelmed British influence, and secured the northwestern territory to this country.

226 The station was maintained by the Methodist society uninterruptedly until 1847, at which time the improvements had been largely increased in number and influence, about one hundred acres enclosed, and half of it under cultivation, and the mission possessed of herds of neat cattle, that pastured on the enclosed ground and the prairie adjoining. The permanent improvements had cost fifteen or twenty thousand dollars, and the movable property was worth four thousand dollars more.

The American board then had three missionary stations east of the Cascades, while the Methodists having none east of the Cascades, except the Dalles, had more work west of the mountains, in the Willamette Valley, than they could well attend to. Rev. Wm. Roberts, agent for the Methodist society in charge of the Dalles, concluded that missionary labor could be more advantageously prosecuted by the American board than by his own society, and therefore, in August, 1847, transferred the station to Dr. Marcus Whitman, agent of the board, selling him a portion of the movable property belonging to the station, and receiving in payment a draft on the American board for something over six hundred dollars.

An express condition of the transfer was that the station should be maintained as a missionary station for the benefit of the Indians.

Dr. Whitman received possession about the first of September, 1847, and the Methodist missionaries, Roberts, A. F. Waller, and H. B.

227 Brewer, left, taking with them the personal property not disposed of. Dr. Whitman placed his nephew, Perrine B. Whitman, in charge of the station, and went himself to Wailatpu, about one hundred and thirty miles distant, in an easterly direction, with the avowed intention of returning permanently to the Dalles to conduct in person the missionary labor there. He shortly after employed and sent Alanson Hinman to assist his nephew in the charge of the station. He also requested Rev. Elcana Walker to come from the mission on the Spokane to take charge as a teacher. Rev. Mr. Walker, at first consenting, finally declined to do so. Hinman and young Whitman remained in charge until, as will be seen, Indian hostilities compelled them to flee for their lives.

During all this time this whole northwestern territory was held in joint occupancy by Great Britain and the United States, the boundary line not being settled or defined. From 1834, when the American missionaries first penetrated this remote region, a contest was going on as

to which nation should finally possess it, and that probably depended on the fact which could first settle it with emigrants.

The British corporation of the Hudson's Bay Company had extended their posts and *and* trading stations through the country, and occupied it with their agents and employees.

228 The Jesuit priests, sent by the bishops of the Canadian Catholic Church, and supported by them, were regarded as encouraging British influence.

On the other hand were the missionaries of the American Board and of the Methodist society, who had established their stations among the Indians in various parts of the country, and who attracted thither the tide of the American emigration, which turned the scale in favor of our government, resulting in the establishment of the "Provisional government of Oregon," wholly American in interest, which continued to exercise all the functions of government over the Territory and its six to eight thousand inhabitants, until the erection of the Territory of Oregon by Congress, by the act of August, 1848.

The solution of the problem was not wholly pacified. The active antagonism between the British on the one hand, and the American on the other, tended to discourage and prevent American emigration, and to prejudice the Indian against the missionaries and drive them from the country. These efforts, it is alleged, bore their fruit November 29, 1847, when the Indians, with a few of the Hudson's Bay Company's men, fell upon the station of the American Board, at Wailetpu, where Dr. Whitman then was. He had done more than all others to advance the American influence in Oregon. He it was who, in 1843, organized and conducted the first wagon train from the East over the

229 Rocky Mountains to that Territory; and which, with its one thousand souls, virtually then and there settled the mooted problem in favor of the United States. It is not surprising, therefore, that he and his old station were selected as the first object of the storm of savage fury thus evoked. He was murdered, as were fourteen others, men, women, and children, at the station; property destroyed, and the station broken up.

The massacre lasted eight days, and terrible barbarities were practiced upon the victims and helpless survivors.

Expeditions were immediately organized and despatched against the other Protestant missionary stations in that section, and an Indian war, known as the "Cayuse war," ensued.

Perrin B. Whitman and A. Hinman, while remaining at The Dalles, held religious services among the Indians every Sabbath.

Early in December, 1847, they learned of the massacre of Dr. Whitman and others at Wailatpu, and at about the same time hostile Indians, painted for war and armed, appeared at the station. In fear of their lives they, on the 16th of that month, fled down the Columbia River in canoes towards the settlements in the Willamette Valley.

On their way down they met a company of Oregon Volunteers under command of Captain H. A. G. Lee, which had been sent by the

230 provisional governor, Geo. Abernathy, against the Indians and to the relief of the missionaries. The troops took possession of and occupied the station, and appropriated the cattle and some other property to their own use. In June, 1848, H. A. G. Lee, then colonel, commanding the volunteers, also superintendent of Indian affairs under the provisional government, issued a proclamation, which was published in the Spectator, then the only newspaper published in Oregon, advising the missionaries of the danger and warning them not to expose

themselves to the fate of Dr. Whitman by going among the Indians east of the Cascades. The troops continued in possession of the station until the spring of 1849.

The act of 1848, it will thus be seen, was passed while the station was held by the military.

In Feb., 1849, it having been found impracticable to continue active missionary operations for the benefit of the Indians at the station, as stipulated in the transfer, W. H. H. Spaulding, Cushing Eells, and Elcana Walker, agents and missionaries of the American Board, made a proposition in writing to transfer the station to Rev. William Roberts, agent of the Methodist Society, as follows:

To Rev. WILLIAM ROBERTS,
Superintendent of Methodist Episcopal Mission
in Oregon, North America:

We, the undersigned, desire respectfully to submit the following proposition, viz: To offer for your acceptance the mission station at Wascopam, now the grand Dalles of the Columbia River. We pro-
231 pose that it be retransferred to the Oregon Mission of the Methodist Episcopal Church in the same manner in which it was received by the Oregon Mission of the American Board of Commissioners for Foreign Missions.

Any article of property included in the list which was received by your mission, and which has been removed or disposed of, we will pay for. The property of the station, whether movable or otherwise, which has been destroyed by the Oregon troops, Indians, or other persons, we would prefer not to be held responsible for.

If it should be necessary to use the name of the mission or board in business transactions with the government for the recovery of property destroyed, we perceive no reason why it may not be done.

(Signed) ELCANA WALKER.
HENRY H. SPAULDING.
CUSHING EELS.

OREGON CITY, *February*, 1849.

Rev. Mr. Roberts, on March 14th, 1849, definitely and in writing accepted the proposition, and immediately assumed charge of the station.

After this retransfer the draft for six hundred dollars on the American Board, given by Dr. Whitman in payment for the personal property sold him at the time of the transfer, and which had never been
232 presented nor paid, was surrendered and cancelled.

The American Board afterwards, on Feb. 28th, 1850, by quit-claim deed released all their right, title, and interest in or to the land and other property at The Dalles to the Board of Managers of the Missionary Society of the Methodist Episcopal Church in order, as the instrument recites, to quiet any doubt as to the title of the said board of managers.

In March, 1850, Major Tucker, with two companions of riflemen, U. S. troops, took possession of the station, destroyed the houses, store, and barn belonging to the station, till then in good preservation, and located a military fort there. The same year a military reserve ten miles square, and embracing the land in question, was established by order of the President.

In June, 1850, as soon after the Cayuse war as it was safe for Protestant missionaries to venture into that section of country, Rev. William Roberts went to The Dalles for the purpose of surveying it and re-

newing missionary labor there, and carried with him a surveyor's compass and chain. He found no one claiming the land and no improvements on it, except those of the military. He employed Justin Chenowoth, a surveyor, to survey the claim. He, Rev. A. F. Waller, who was one of those in charge of the station at the date of its transfer in 1847, and Dr. Walker carried the chain. In regard to the survey, Mr.
233 Roberts testified that, "I followed the boundaries pointed out to me by the missionary, Rev. A. F. Waller, who had resided there for several years. What I mean by boundaries pointed out to me is, that I surveyed 640 acres of land upon a general area shown to *be* by Mr. Waller. * * * * * * I did intend most earnestly to conform the lines to what I believed to be the original purpose in settling the claim."

The survey embraced the landing on the Columbia River, the mill site, the camping ground of the Indians attached to the station, the site of the mission buildings, the farm and enclosure, and the outside ground occupied as a pasturage for their cattle. The corners were indicated by appropriate monuments.

Mr. Waller testified that the survey followed the understood boundaries of the claim, and that he learned the boundaries from Mr. H. B. Brewer, who, with Rev. Jason Lee, established the mission in 1836, and who remained there to the time of its transfer in August, 1847.

Several religious services were held by them among the Indians during their stay. Owing to the destruction of their buildings and general confusion among the troops, who were deserting, they remained only one week. Subsequent attempts were made to re-establish the mis-
234 sions, but were frustrated by the officers commanding the fort.

The survey, as made, was recorded in the office of the clerk of Clackamas County, the record bearing date of Nov. 16th, 1850, and was afterwards published in a newspaper of that section.

Upon the subsequent organization of Wasco County, in which the land lay, the survey was recorded in that county. In 1854, formal notification and supporting evidence of the claim was filed with the surveyor-general of Oregon.

In , 1854, orders issued from the War Department to reduce the military reserve to six hundred and forty acres, and to lay it off in such manner as in the least degree to interfere with private rights.

The order was executed, and the new boundaries of the reserve embraced only three hundred and fifty three and a fraction acres of the mission claim. Claim was then made by the society upon the War Department for a restitution of, or payment for, that portion of their claim embraced in the military reserve.

Maj. G. J. Raines, then commanding that military division, charged with investigating the claim, August 18th, 1855, reported favorably that the society be paid twenty thousand dollars for that portion thereof taken for military purposes.

235 Further investigation of the claim was had by the War Department, resulting in the Secretary of War affirming its validity and recommending to Congress an appropriation of twenty thousand dollars, which the society offered to accept in payment for their land taken.

The matter was referred to the Committee on Military Affairs of the House, who investigated the claim and reported thereon January 28th, 1859 (H. of R. Report No. 145, 2d Sess. 35th Congress); after giving a brief history of the case, says:

"Three hundred and fifty three and a fraction acres of the land originally held by the Methodists have been embraced within its (the

military reservation) limits. The committee have no doubt from the evidence adduced that the Missionary Society of the Methodist Episcopal Church was in possession of this land on the 14th of August, 1848, within the meaning of the act passed on that day, and that the title was that day confirmed and established. So soon as the danger of Indian hostilities admitted, the society endeavored to reoccupy their buildings and land, but the troops had ere then taken possession and permanently located their military establishment.

"There is no room to suppose that there was any abandonment of the premises. Under these circumstances, the committee believe that the claimants have a just cause for relief, and that they are entitled
236 to the full value of the land in 1850, when the military occupation became permanent. The demand of the society is for twenty thousand dollars. The military in command of the Dalles in 1854–'5, the Delegate in Congress from Oregon, and other intelligent gentlemen, well acquainted with the premises, coincide in the opinion that this demand is not unreasonable, and the committee have arrived at the same conclusion. This same society have filed a claim for the destruction of the houses and certain personal property, amounting to upwards of four thousand dollars. Your committee believe that the sum above named would suffice to cover all the injury sustained by the claimants, and would therefore recommend that the payment of the said sum be upon the condition that a release be filed in the proper department, approved by the Attorney-General, of all claims to the said land, and to damage sustained by the destruction of property aforesaid."

June 16th, 1860, Congress passed an act (12 Stats., 44) appropriating twenty thousand dollars to the society as recommended by the committee.

The release was filed, accepted, and the money paid to the society.

In the mean time the society were pressing their claim before your office to that portion of their land not included in the military
237 reserve, asking that it be officially surveyed and set apart to them.

March 14th, 1860, the then Commissioner, Wilson, issued instructions to the surveyor-general of Oregon "to give public notice of the pending of the application for a survey, and of your intention to institute an examination with a view to determine the true location of the claim, calling upon all parties interested to appear before you, at a time to be fixed by the notice, and make such showing as they may desire. Besides the public notice, you will give special notice to all parties known to you to have an interest in the matter. At the appointed time you will proceed to give a full hearing to all parties concerned, and after a careful investigation will report the result to this office in your decision, to be accompanied by the testimony taken and illustrative diagram."

After due notice given, hearing was had Feb. 16th, 1860. There appeared to contest the claim of the society the town of Dalles, claiming under the town-site law, W. D. Bigelow, a claimant under the Oregon donation law of Sept. 27th, 1850, and Victor Trevitt, a settler under the pre-emption law of 1841.

The surveyor-general Feb. 2d, 1861, rendered his decision adverse to the claim of the society and, May 4, 1861, forwarded the same, with
238 the papers in the case, to your office. Accompanying the papers are three plats of survey, numbered 1, 2 and 3; No. 1, showing the mission claim as surveyed by Roberts in June, 1850, the military reserves, and the other conflicting claims; No. 2, the military reserve as finally established, and a portion of the mission claim; and No. 3, the military reserve and the mission claim, the latter surveyed in a differ-

ent shape, embracing the improvements and extending southward from them to embrace the quantity of six hundred and forty acres.

On appeal taken by the society, Commissioner Edmunds, on Feb. 7th, 1863, affirmed the decision of the surveyor-general.

On the 24th of the same month appeal was taken to the department. April 27th, 1864, Hon. J. P. Usher, then Secretary of the Interior, submitted the case to Attorney-General Bates for his opinion.

The Attorney-General, under date of May 27th, 1864, advised the Secretary that the Land Office was without jurisdiction in the premises, and that the question should be left for the courts to decide.

Acting Secretary Otto thereupon, on July 20th, 1864, remanded the case without decision to the Commissioner, instructing him to decline jurisdiction of the case.

August 24th, 1865, Secretary Harlan, in a letter to the Commissioner, received at length the opinion of the Attorney-General, declined
239 to be governed by it, and directed the Commissioner to take jurisdiction of this class of cases.

In pursuance of verbal instruction, the Commissioner, on July 5th, 1871, reforwarded the case to this department.

The case is therefore before me for decision as an appeal from the adverse decision of your office. The adverse claims presented to the surveyor-general were not passed upon by him, and were not considered in the decision of your office. All these claims originated long after the claim of the Methodist society, and can only have validity upon the failure of the society's claim.

The society's claim now before the department, for that portion of the six hundred and forty acres not included in the military reserve and paid for by Congress, may be considered under two heads:

1st. As to required occupancy; and,

2d. As to extent and boundary.

The grant is contained in the second proviso of the first section of the act of August, 1848, and is as follows:

"And provided also, that the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among *among* the Indian tribes in said Territory" (Oregon), "together with the improvements thereon, be confirmed and established in the several
240 religious societies to which said missionary stations respectively belong."

1st, then, as to occupancy:

If the land was occupied as a missionary station at the date of the passage of the act, title is confirmed. If so occupied, it is immeterial whether by the American Board or the Methodist Society, as the former have acknowledged the superior claim of the latter, and have released all right or interest they might have had or acquired in the land to the latter. There is, therefore, practically but one claim.

In view of the great benefit rendered the nation by the missionaries in their early labors in Oregon, there is little room to doubt that Congress was moved thereby to making the grant, as a slight acknowledgment thereof, and as consideration for past services rendered.

However this may be, the statute, being remedial, is entitled to a liberal construction.

The Dalles was actually held as a missionary station until those in charge were obliged to flee in reasonable fear of their lives. As soon as it was safe to do so, the missionaries returned to the station, renewed their labor, and attempted to re-establish their station, and their labors

were only frustrated by the intervention of the military authorities commanding the fort and troops there stationed.

During this forced temporary absence of the missionaries, and
241 while their buildings, fencing, and improvements remained upon the land, the granting act was passed.

To require a strict and rigid compliance with the terms of the act in regard to occupation—"now occupied"—in the sense of the actual, corporeal presence of the missionaries, eo instanti, upon the ground at the date of the passage of the act, would be harsh, unreasonable, and contrary to its manifest spirit and intention.

To adopt the more liberal construction, and hold that the land was occupied as a missionary station within the meaning of the act, is, I think, but reasonable and proper, and this is evidently the view taken of it by Congress when they subsequently passed the act of June 16th, 1880, [12 Stats., p. 44], to pay the Methodist Society for a portion of land embraced in its claim.

2nd. As to extent and boundaries:

In considering this question, it must be remembered that up to the time of the departure of Whitman and Hinman there was no white settlement within a hundred and thirty miles of the station; hence no conflicting claims to land and no reason or necessity for definitely fixing and establishing boundaries:

The general boundaries, however, appear to have been fixed and understood by the missionaries in charge of the station, and to have
242 embraced a larger area than six hundred and forty acres, the amount of land generally granted and held under the provisional government.

When it became necessary, by reason of the grant of 1848, to specifically designate the boundaries, it was not possible to do so, by reason of the Indian hostilities, nor did it become possible until 1850, when, in June of that year, it was accomplished, as recited, by Rev. Mr. Waller and his assistants. The boundaries then established are shown on map 1.

The surveyor-general, in his decision and report, recommended that if the quantity of six hundred and forty acres be confirmed to the society, it be taken in a form different from this, viz, bounded on the north by northern boundary of the enclosure, and extending southward therefrom, including the farm and buildings, and the plateau used as a pasture ground.

The plat of the suggested boundaries is shown on map 3, and includes the mill site, the landing on the Columbia and the Indian camping-ground, and avoids almost entirely conflict with the principal contestant, the town of Dalles.

The last consideration is entitled, however, to no weight, as the question is between the society and the United States solely. I am of the opinion that the occupation and the general boundaries, embracing, as they did, more than six hundred and forty acres, were sufficient
243 to establish the claim to the full quantity granted by the act.

I am also of the opinion that the survey of 1850 was a timely and sufficient indication and establishment of the specific boundaries.

To require that the boundaries should have been accurately indicated before the time that the occupants were driven from the station, would, under the circumstances, as narrated, been unreasonable.

To require that it should have been done at any time after that date and before it was actually done, would be equally unreasonable, if not to be deemed an impossibility.

No other persons were so competent to perform that office as those who actually did perform it, and the lines thus established should be adopted unless some valid reason appear for rejecting them, which is not the case.

Adverse claimants cannot complain, for long before the inception of their claims the lines of the mission claim had been definitely settled and indicated upon the face of the ground, made of public record, and publication had thereof in the newspapers published nearest the land. The claim of the society was notorious, and parties settling thereon and instituting claims thereto did so at their peril.

244 In addition to this general and public notice, in many, if not all cases, personal notice and warning were given to persons settling upon the land. The society left nothing undone to guard their rights, and are entitled to full protection. In my opinion the society is entitled to the land included in the survey of 1850, as shown on map 1, less the three hundred and seventy-three and a fraction acres included in the military reserve paid for by Congress.

I reverse the decision of your office, and return the papers in the case transmitted with your letter of July 5th, 1871.

Very respectfully,

C. DELANO,
Secretary.

Hon. COMMISSIONER GEN'L LAND OFFICE.

OFFICE OF UNITED STATES SURVEYOR-GENERAL,
Portland, Oregon, April 19th, 1875.

I certify that the foregoing is a correct transcript of the original on file in my office.

BEN SIMPSON,
Surveyor-General, Oregon.

(Endorsed:) Transcript of Secretary Delano's decision in the matter of The Dalles Mission claim.

245 Know all men by these presents, that "The American Board of Commissioners for Foreign Missions," a corporation by law established (having its offices of direction and business at Boston, in the county of Suffolk, and commonwealth of Massachusetts), in consideration of one dollar to them paid by "The Board of Managers of the Missionary Society of the Methodist Episcopal Church," incorporated by an act of the legislature of the State of New York, passed April 9, 1839, the receipt whereof is hereby acknowledged, do by these presents grant, release, and forever quitclaim unto the said "The Board of Managers of the Missionary Society of the Methodist Episcopal Church," all the right, title, interest, claim and demand of the said "American Board of Commissioners for Foreign Missions" in and unto all the land, and other property whatsoever, situated at or in the vicinity of the Dalles, on the Columbia River, in the late Territory, now State, of Oregon, and known as the "Mission property," at said Dalles, however said land may be bounded or said property described. To have and to sold the said granted, released premises unto the said "The Board of Managers of the Missionary Society of the Methodist Episcopal Church," and to their successors and assigns, to there own use forever. This release being made to quiet any doubts as to the title of the said "Board of Managers," but without any warranty on the part of the said "American Board of Commissioners" expressed or implied.

246 In testimony whereof the said "American Board of Commissioners for Foreign Missions" have hereunto set their common seal, and have also caused these presents to be subscribed in their behalf by William J. Hubbard, the chairman of their prudential committee, and by Rufus Anderson, the clerk thereof (the officers specially designated by the charter of the said corporation to authenticate its deeds), on this twenty-eighth day of February, in the year of our Lord one thousand eight hundred and fifty-nine.

{ SEAL OF THE AMERICAN BOARD OF COMMISSIONERS FOR FOREIGN MISSIONS. } WM. J. HUBBARD, *Chairman of Prud. Com'ee of A. B. C. F. M.*

Signed, sealed and delivered in presence of us:
GEO. T. ANGELL.
CALEB HOLLIS.

COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, City of Boston, ss:

I, Geo. T. Angell, commissioner of Oregon, resident in Boston, in said Suffolk, duly commissioned & qualified by the governor and under the laws of Oregon to take depositions, affidavits, acknowledgment of deeds, &c., to be used or recorded in Oregon, do hereby certify, and be it remembered that on this 28th day of February, A. D. 1859, personally appeared William J. Hubbard, the chairman of the prudential committee of the said "American Board of Commissioners for Foreign Missions,"
247 and Rufus Anderson, the clerk of the same (personally known to me to be the same persons described in and who executed the within instrument), who jointly and severally acknowledged the same to be their free act and deed in their said official capacities, and the free act and deed of the said corporation.

Before me. Witness my hand and official seal at Boston aforesaid this February 28th, 1859.

[G. T. A.] GEO. T. ANGELL,
Commissioner of Oregon in Boston.

STATE OF OREGON,
Multnomah County, ss:

I hereby certify that the annexed instruments of writing were received for record April 26th, 1859, and are recorded on page 275 of book B of the record of deeds in the office of the recorder of Multnomah Co.

In testimony whereof witness my hand and the seal of said county hereto affixed at Portland, this 26th day of April, A. D. 1859.

{ MULTNOMAH COUNTY, OREGON. } D. W. LICHTENTHALER,
Auditor & Recorder.

248 STATE OF OREGON,
County of Wasco, ss:

I hereby certify that the *annissed* of writing were received for record May 9th, A. D. 1859, and are recorded on page 75 & forward of book B of the records of deeds in the office of the recorder of Wasco County.

In testimony whereof, witness my hand and the seal of said county hereto affixed at Dalls City, this 9th day of May, A. D. 1859.

[WASCO COUNTY, OREGON.] W. C. MOREY,
Auditor & Recorder.

249 DALLES, *February 23d*, 1860.

DAN'L MURPHY,
Deputy Surveyor:

SIR: You are requested to locate the boundary of the first military reserve at The Dalles, connecting the east boundary with the public surveys so that the same may be precisely and correctly represented upon plats.

2. Also the late military reserve in like manner with reference to its easterly boundary.

3d. Locate accurately the present military reserve and close the public surveys thereon.

4th. You will survey the Methodist Mission improvements and locate them.

5th. You are requested to survey a tract as near square as practicable, embracing the mission's improvements with the northern boundary thereof corresponding with and as near the bluff line as practicable.

6th. You will survey a tract in the same shape, but extending back far enough to embrace 644 acres if practicable, without enterfering with other claims in the rear.

The intention of these surveys is to enable the office to prepare three maps. One representing the Catholic & Methodist claims and first and second military reserve, as they were when Biglow took his claim.

The second representing the public surveys the present reserve, Biglow claim, city claim, & Trevitt's claim, and the notes and dia-
250 grams return to the surveyor-general's office at Eugene City as soon as practicable.

Respectfully, yours,
(Signed) W. W. CHAPMAN,
Sur. Gen., Oregon.

(Copy.)

(Endorsed:) Instructions to Daniel Murphy to make surveys of claims, &c., at Dalles.

251 GENERAL LAND OFFICE,
Aug. 3d, 1854.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the annexed copy of the notification to the surveyor-general of Oregon, of the claim of the Methodist Episcopal Church to land at The Dalles of the Columbia River, is a true and literal exemplification from the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] JOHN WILSON,
Commissioner of the General Land Office.

252 *Notification to surveyor-general of Oregon of claim to public land at The Dalles of the Columbia River, in Clackamas County, Oregon Territory.*

Pursuant to the act of Congress approved August 14th, 1843, entitled "An act to establish the Territorial government of Oregon," vesting the title to land in said Territory, not exceeding six hundred and forty acres, in the several religious societies occupying the same at the time

of the approval of said act as a missionary station among the Indian tribes, I, Thomas H. Pearne, agent for Oregon and California of the Board of Managers of the Missionary Society of the Methodist Episcopal Church in the United States, do hereby, for and in behalf of the Missionary Society of the Methodist Episcopal Church in the United States, give notice of the claim of said society to donation of six hundred and forty acres of land, described and designated as follows, to wit:

Commencing at a stake having stones piled around it a short distance beyond a rocky prominence about two hundred and fifty yards above the mouth of Mission Creek; thence south 110 two pole chains to a stake, an oak witness tree about 24 inches in diameter bearing south 78° W. 14 chains and 20 links; thence west 160 chains to a
253 large boulder, two witness trees, first an oak 10 inches in diameter bearing north 58° 30′ east 45 links, second an oak 4 inches in diameter bearing south 37° W. 30 links; thence north 190 chains to a stake having stones piled about it; thence east 60 chains to the river to a stake having stones piled; thence up the river to the place of beginning, containing six hundred and forty acres, be the same more or less.

Salem, 29th March, 1854.

THOMAS H. PEARNE,
Agent of the Missionary Society of the Methodist Episcopal Church for Oregon & California.

G.

I, Charles K. Gardner, sur. gen'l of public lands in Oregon, certify the within to be a correct copy of the original on file in this office.

In testimony whereof I have hereunto set my hand and caused the seal of this office to be affixed.

Sur. gen'l' office, Oregon City, March 30th, 1854.

C. K. GARDNER,
Sur. Gen'l of Oregon.

254 There is also filed with the papers of said notification a newspaper entitled Oregon Spectator, vol. 3, Oregon City (Oregon Territory), Thursday, July 13, 1848, No. 12, containing certain letters from H. A. G. Lee, sup't Ind. affairs, of which the annexed is a copy, to wit:

OREGON CITY, *June* 24, 1848.

C. K. GARDNER,
Sur. Gen'l of Oregon Ter.:

Inclosed is a letter from William McBean, esq., chief trader of the Hon. H. B. Co. at Fort Nez Perce, containing some intelligence relative to Indian affairs, which may be read with some interest:

In connection with the transaction reported in that letter, allow me to say that a reward of 50 blankets has been offered for the capture and delivery of any one of the principal murderers such as Telow-Koiké, Lucky H., or half that amount for their scalps; and 25 blankets for any one of the common men concerned in the massacre. This reward was offered upon the faith of a subscription which was gotten up in the regiment after it was resolved that it was useless for the regiment to pursue the flying enemy further; the fact that such a reward was offered was not known to Serpant Jaum at the time referred to in McBean's letter; but I am happy to say it was known to the Nez Perces,

and favorably considered by them; and that I have good reason
255 to believe that some of the most influential men amongst are now laboring to gain that reward. Permit me to intrude a little further and say for the information of all concerned that it is desirable that the peace of the country should not be endangered by missionaries exposing themselves to the fate of our esteemed and lamented friends at Waulatpu. In accordance with this desire an opportunity was offered Rev'd Messrs. Eels & Walker, of making their escape from the casualties of savage treachery, unawed by efficient military protection, and I am truly glad that they improved that opportunity, and are now safely, and I hope pleasantly, enjoying the society of friends in this city. Upon the same principle a note was dropt the rev'd fathers as I passed Wascopam, a copy of which I enclose.

Respectfully,

H. A. G. LEE,
Sup. Ind. Affairs.

FORT WASCOPAM, *June 15th*, 1848.

REV'D MESSIEURS: As superintendent of Indian affairs, it becomes my duty to inform you, with all due respect to your sacred calling, that it is desirable no further missionary effort should be made with any Indians east of the Cascade Mountains until the presence of well-organized and disciplined troops, under command of United States offi-
256 cers, shall render such efforts safe and judicious. At present the relations between the white and Indians are too precarious to allow missionary labors with the Indians to be either prudent or effective of good.

So soon as circumstances will allow, I shall take much pleasure in throwing wide the door of missionary labors amongst the natives to all Christian missionaries; at present prudence demands that it should be closed against all.

With much respect, I have the honor to be, messieurs, your ob't serv't,

H. A. G. LEE,
Sup't I. A.

To Messieurs BLANCHETT.

Alvan F. Walker and Josiah L. Parrish, of Marion County, in the Territory of Oregon, being duly sworn, say that, to the best of their knowledge and belief, in the year 1840, the Missionary Society of the Methodist Episcopal Church were in actual occupation of the tract of land held as a missionary station at the Dalles of Columbia River in said Territory, particularly described in the notification hereunto annexed, and that said society continued to occupy the same as a missionary station among the Indian tribes in said Territory until September, A. D. 1847, soon after which time said Dalles station was con-
257 ditionally transferred to the American Board of Commissioners for Foreign Missions, whose agent, Marcus Whitman, held possession in fact until he was murdered by the Indians, in the latter part of the year 1847; soon after which time, as was generally understood and is now believed by deponents, and as the public documents of that period will indicate, all white settlers were ordered from said section of the country by an officer of the government; said conditions were never complied with on the part of the said commissioners for foreign missions, and the station and appurtenances thereto were redelivered to said Missionary Society of the Methodist Episcopal Church on the 13th day of

March, 1849; that on the 14 day of August, 1848, said missionary station was occupied by the soldiers in actual service in the Cayuse war. But said Missionary Society of the Methodist Episcopal Church has always since said conditional transfer, and particularly on the 14th day of August, 1848, claimed the legal right of occupancy of said Dalles station.

ALVAN F. WALKER.
JOSIAH L. PARRISH.

Subscribed & sworn to before me this 29th day of March, at Salem, A. D. 1854.

E. J. HARDING,
Clerk of the United States District Court in and for the county aforesaid.

In witness whereof I have hereunto signed my name and affixed the seal of said court this day and year above written.

[SEAL.] E. J. HARDING, *Clerk.*

258 I, Charles K. Gardner, sur.-gen'l of public lands in Oregon, certify the within to be a correct copy of the original on file in this office.

In testimony whereof, I have hereunto set my hand and caused the seal of this office to be affixed.

Surveyor genaral's office, Oregon City, March 30th, 1854.

C. K. GARDNER,
Sur.-Gen'l of Oregon.

GENERAL LAND OFFICE.
December 8th, 1857.

SIR: In complyance with your request of the 4th inst., I have to state that I have this day transmitted to the War Department (1st) copy of the additional evidence filed in this office April 21st, 1856, by the Rev'd Thos. A. Pearne, in relation to mission claim at the Dalles, Oregon Territory; (2d) copy of the notification, No. 56, to the sur.-gen'l of Oregon Ty. in relation so said mission claim.

Very respectfully, your ob't servant,

THOS. A. HENDRICKS,
Commissioner.

Rev'd J. P. DURBIN,
Cir. Secretary of the M. Society of the Meth. Ep. Church, No. 200 Mulberry street, New York.

259 The Rev. William Roberts, superintendent of the Methodist mission in Oregon, claims for and in behalf of the Missionary Society of the Methodist Episcopal Church 640 acres of land in Clackamas County, at or near the Dalles of the Columbia, embracing what was known as the Dalles Mission station, described as follows, to wit: Commencing at a stake, having rocks piled around it, a short distance beyond a rocky protu'rbance about two hundred and fifty yards above the mouth of Mission Creek; thence south 110 chains two poles and a half to a stake, an oak witness tree 24 inches in diameter, S. 78° W. 14 chains and 20 links; thence west 160 chains to a large boulder, two witness trees, the first an oak 10 inches in diameter bearing north 58° 30′ E. dis. 15 links; the second an oak 4 inches in diameter bearing south 8° W. links; thence north 190 chains to a stake, having rocks piled around it; thence east

sixty chains to the river, to a stake having rocks piled around it; thence up the river to place of beginning.

The witness trees are marked.

This claim is held under the first section the act of Congress of Aug. 14, 1848, entitled an "An act to establish the Ter. government of Oregon."

Recorded November 16th, 1850.

Attest:

F. S. HOLLAND,
Clerk of Probate & Co. Court of Oregon.

260 STATE OF OREGON,
Clackamas County:

I, F. S. Holland, clerk of the county court of said county, do hereby certify the foregoing to be a true copy of the record of the Methodist Mission land claim as appears recorded on pages 38 in the records of land claim of said county.

In witness whereof I have hereto set my name and the seal of said county this 14th day of February, 1860.

F. S. HOLLAND, *Clerk.*

Copy of notification of Dalles Mission claim, by Rev. W. Roberts, recorded Nov. 16, 1850, at Oregon City by F. H. Holland, clerk of the probate court of said co.

261 The depositions of A. Hinman, W. Roberts, T. H. Peance, witness' on behalf of the Methodist Mission claim, taken at Portland, Oregon, in the presence of the attorneys for the claimants & contestants, as well as in pursuance of notice duly published.

ALANSON HINMAN, of Washington County, being duly sworn, deposeth and saith that he is 38 years of age.

Question by the claimant. State all the knowledge you have of there having been a missionary station at the Dalles; whether you were ever there; and if so, in what capacity.

Ans. In 1843, he came down with Dr. Whitman past the Dalles Mission, and knows that it was held at that time by the Methodist Episcopal Church as a mission station amongst the Indians. I passed up again to the Walla Walla Valley in June, I think it was, in 1847, and does know that it was held by the same at that time, at which last-mentioned he was told by Dr. Whitman that he was negotiating for that station, and that he would like to employ him to carry on farm, and to attend to all the secular affairs of the station. Dr. Whitman informed witness that his object in obtaining or negotiating for said station was that he might the better carry out his missionary purposes in the country above, and continue it as a missionary station.

262 Ques. State if, subsequent to the time alluded to by you when you had the conversation with Dr. Whitman, whether you became connected in any manner with said station; and if so, how & in what capacity.

Ans. He was employed by Dr. Whitman to tend to the farm and the secular affairs of the missionary station. He went to said station some time in the fall, perhaps in September, of 1847, and remained there till some time in December or until about two weeks after his, Whitman's, death.

Ques. State whether there was a mission there kept up, and who was there with him connected with the mission.

Ans. Perrin Whitman, nephew to Dr. Whitman, was sent by the Dr. to the Dalles Station to acquire the language used by those Indians and to hold religious services, and did so while witness resided there. Perrin Whitman held religious services there every Sabbath, in the church.

Ques. How long did you contract to stay, and how long did you intend to stay, at the Dalles Mission when you went there?

Ans. He contracted to stay one year, with the proviso that he might stay a longer time if satisfactory to all parties, and when he went there he intended to stay longer than one year.

Ques. State why you left the Dalles Mission when you did.

263 Ans. Because he thought the Indians would get his scalp if he stayed longer.

Ques. State the circumstances under which you left.

Ans. He was at Vancouver for medicine for the Indians, and had read the dispatches from Walla Walla, by which he learned that Dr. Whitman and many of the immigrants had been murdered by the Indians, and that there were three parties of Indians leaving or about to leave, one for Dr. Whitman's saw-mill, one for Clear Water, Mr. Spaulding's Station, and the other for the Dalles to kill all the Americans residing at the different places mentioned.

Ques. Who were those dispatches from?

Ans. From Mr. McBane, an employee of the Hudson Bay Company in charge of Fort Walla Walla.

Ques. What was his nationality & religion?

Ans. He thinks Mr. McBane was a half-breed, and belonged to the Catholic Church.

Q. What did you do upon hearing the dispatches read?

Ans. Upon hearing the dispatches read he (witness) wrote immediately to Gov. Abernathy, informing him of the massacre, and desiring him to send a sufficient force to the Dalles to take possession to prevent it from falling into the hands of the Indians, and himself hastened to return to the Dalles, which he did do, travelling day and night to reach the Dalles. He arrived at the Dall's,

264 stated to the Indians there before reaching the house the state affairs in the interior, and particularly in relation to the murder of Dr. Whitman and others at Wiluap, and enquired of them what they would do if the Indians should come to kill the whites at the Dalles. They said that they (the Indians) would fight for them (the whites at the Dall's), upon which witness proceeded to the house and took Perrin Whitman into the chamber and told him of the death of his uncle and aunt and others at Dr. Whitman's station, and that there were three parties of hostile Indians left or about to leave for the stations as above described. Just as this conversation was being held Perrin Whitman told witness that it was reported on yesterday that there was a party of hostile Indians at the Deschutes River on their way down to murder the whites at the Dall's. The Deschutes is about twenty miles from the Dall's. Just as he told me this he looked out of the window and saw five Indians mounted, armed, and painted, approaching the house. Supposing them to be part of the party spoken of, witness seized a rifle, and was told by Whitman that it was not loaded, and that there were no balls for the same. Having nothing with which to defend ourselves, he thought of the Indians' promise of protection, and

265 told Perrin Whitman to make fast the doors, and witness left (through the back door of the wood-shed) for the Indians who had

just promised protection. Having proceeded a short distance from the door, he observed one of the hostile Indians close at the corner of the house with his gun by his side, watching witness—that he expected to have been fired upon. He, however, proceeded unmolested to the camps of the Dall's Indians, on the lower flat, about a half. mile off. He then called upon those Indians for the promised protection, but they declined either to furnish arms or any assistance, assigning as a reason that if they should comply with this request of witness, they themselves would be killed. Witness then returned to the house, and on his way thither was met by two of the hostile Indians on horseback, armed with guns. They were painted, and presented a warlike appearance. They attempted to force their way into the house, but could not. I then obtained a talk, professing ignorance of the Whitman massacre, but their professions were evidently false. After many hostile demonstrations they left, driving off several head of horses. Witness thinks his having put his hand in a position to use firearms saved him from attack.

266 Question. After the Indians referred to in your last answer left, how long did you remain at the station?

Ans. We began immediately making preparations to leave, and applied to the Dall's Indians for assistance to leave, which they declined to give, or even willingly to permit us to leave, because, as they said, we had come to live among them, and they liked us very much. The chief was then told that Gov. Abernathy would hold them responsible if we should be harmed by other Indians, because they had not assisted & permitted us to escape. This changed his mind, gave his consent, and assisted us to leave. When the Indians declined assisting them to get away it raised a suspicion of some evil intention on their part. The Indians having become reconciled to the whites abandoning the station, afforded all necessary facilities, and witness, with all other whites, left & made their way down the river in canoes and proceeded until they met Capt. H. A. G. Lee's company of volunteers, about "Wind Mountain," with whom the witness returned to the Dall's, when he opened the doores of the mission houses, & they took possession.

The family of witness remained camped near Wind Mountain.

267 Question. Did you ever attempt to remove from the station or the mission houses any of the property belonging to the mission? State all the circumstances.

Ans. He did remove some that had been transferred by the Methodist mission to the American board. About the last of December, 1847, or 1 *first* of January following he gathered together and attempted to remove from the station to the lower country some cattle, but, with the exception of a few poor ones, he was prevented from removing by the military or volunteers under the orders of Gen'l Gilliam, and the cattle were taken possession of by the troops for subsistence, &c., &c.

(Col. James K. Kelly, counsel for W. D. Bigelow, appeared and objected to the evidence of Hinman so far as the same is based upon the declarations of Dr. Whitman.)

Cross-examined by counsel for Bigelow.

Question. About what was the date of the conversation you had with Dr. Whitman when he told you he was negotiating with the Methodist for the Dalls mission station?

Ans. He thinks it was in the month of June, 1847.

Q. When did he inform you that the Methodist Missionary Society had agreed to transfer the station?

268 Ans. Thinks it was about the last of July or the first of August, 1847.

Q. State what position the Rev'd Mr. Geary occupied in the Methodist Episcopal Church?

Ans. He was superintendent of the Oregon missions, as witness undorstood.

Q. State whether Mr. Geary did not order the abandonment of the Dalls mission station before June, 1847?

(Objected to leading and *and* susceptible of a higher order of proof.)

Ans. Witness has no knowledge of such an order.

Q. In the conversations which you had with Dr. Whitman, what did he say, if anything, about Mr. Geary having given orders for the abandonment of the Dalls mission station?

(Objected to because hearsay and secondary evidence.)

Ans. He never heard Mr. Whitman say anything about Mr. Geary's having given orders to abandon the station, but he, Dr. Whitman, did say that Mr. Geary was favorable to its transfer to the American board for missionary purposes and opposed to its falling into the hands of the Catholics.

Q. What time did the Methodist Missionary Society abandon their missionary station at the Dalls?

269 Ans. Messrs. Waller & Brewer had charge of the Dalls station under the Methodist Society, and about the last of August or first of September they left the station. They took away to the Willamette a portion of their property at that time, and after witness came into possession under the American board Mr. Brewer come and removed the major portion of their property, and before the massacre at Whitman's all their property had been removed.

Q. State whether the Methodist Missionary Society at any time after the removal of Messrs. Waller & Brewer, in August or September, 1847, occupied that place as a missionary station.

Ans. Not to the knowledge of the witness.

Q. What missionary stations had the American board, and when were they located, and what ministers or persons were in charge of the missionary stations under the American board in August or September, 1847?

Ans. The missionary stations of the American board, in Oregon, in August or September, 1847; Wailatpu, in Walla-Walla Valley, Cayuse Indians, Dr. Whitman in charge; Clear Water Nez Percés, Mr. Spaulding in charge; Chino-cu-Kain Spokane country, Messrs. Eels & Walker in charge.

270 Q. Was there a missionary establishment or any person authorized (or minister) to perform the duties of a missionary station at the Dalles after the Methodist Episcopal Church abandoned that station?

Ans. There was Perrin Whitman, the nephew of Dr. Whitman, was there for that purpose and acted as missionary under Dr. Whitman.

Q. What was the age of Perrin Whitman at that time, and was he a preacher?

Ans. He was not a licensed preacher; he must have been under eighteen years of age. He held meetings every Sabbath amongst the Indians.

Q. Was there any other person than Perrin Whitman at that station who performed missionary services after it was abandoned by the Methodist Society?

Ans. Not during the residence of witness.

Q. How long did Perrin Whitman remain there performing missionary duties?

Ans. It must have been over two months.

Q. Did the American Board of Missions at Boston, at any time, recognize Perrin Whitman as a missionary among the Indian tribes?

Ans. It is beyond my knowledge; I know nothing about it.

Q. State whether the American board at Boston ever claimed or recognised the Dalls Missionary Station as one of the stations amongst their Indian tribes in Oregon?

271 Ans. Has no knowledge upon that subject.

Q. Was Dr. Whitman ever at the Dalls after August or September, 1847?

Ans. Should think not; does not believe he was.

Q. State whether that station was occupied as a missionary station, or were there any missionary services performed there by any person, under either of the Methodist Society or the American board after the month of November, 1847?

Ans. He is not clear up to the date, but think there was not. There was not any after the American Board abandoned, which he says was in the month of December; the same having been abandoned on account of Indian difficulties.

Re-examined-in-chief:

Q. State what you know, if anything, about Dr. Whitman's arranging to have a preacher stationed at the Dalls station?

Ans. Mr. Walker was solicited to come and take charge as a teacher, and he was a preacher.

Q. Was Dr. Whitman a preacher?

Ans. He was not.

Q. Was your abandonment or leaving of the Dalls station an act of choice or compulsion?

Ans. It was on compulsion—we considered it necessary to abandon it to save our lives.

272 Cross examination:

Q. State whether the Indians at the Dalles were hostile, or did you leave on account of the hostility of the Cayuse Indians?

Ans. The station was abandoned on account of the hostility of the Cayuse, and Walla Wallas at the Deschutes.

Q. Did Mr. Walker at any time come to take charge of the station at the *at the* Dalls as requested by Dr. Whitman?

Ans. He did not. He thought that he would in the first place, but finally concluded that he would not leave Mr. Eels & learn a new language of the Indians. Witness says he has no interest in the matter under consideration.

ALANSON HINMAN.

Subscribed and sworn to before me this 11th day May, 1860.

(Endorsed:) Methodist Mission. Testimony of Hinman.

273 In the matter of the Methodist Mission claim.

Deposition of A. F. Waller, taken in the presence of the attorneys of the parties, and in pursuance of notice before the surveyor-general of Portland, Oregon, on the 14th day of August, 1860.

Rev'd ALVAN F. WALLER, a witness of lawful age, being duly sworn, deposeth and saith:

Question. By A. C. GIBBS, esq., attorney for the Methodist Mission:

Q. State your age, residence, and occupation?

Ans. I am fifty-two years of age; reside at Salem, Marion County, Oregon, and my occupation is that of a minister of the gospel.

Q. When did you first commence your residence in Oregon, and what was your business?

Ans. I arrived in Oregon in May, A. D. 1840, & soon after commenced preaching to and instructing the Indians, and preached to the white people also.

Ques. In what capacity were you so preaching and laboring?

Ans. As a missionary under the direction of the Missionary Society of the Methodist Episcopal Church.

Q. State whether said society had any missionary stations east of the Cascade Mountains; if any, what?

Ans. They had one station at the Dalles of the Columbia,
274 known as the Dalles Station, sometimes called "Wascopam."

Q. State fully all you know of the history and expense of establishing and maintaining said missionary station.

Ans. The mission was established there in 1836. Witness found it there upon his arrival in Oregon in 1840.

(Contestant's counsel, Gen. Bridges, objects to any testimony not based upon witnesses personal knowledge.)

Witness was appointed to that station in July, 1844, perhaps, and arrived there in the first week in September following. He found Messrs. Perkins and Brewer there with their families—missionaries of said society whom he superseded—Brewer remaining with him. He found a farm at that place—thirty to forty acres enclosed, and nearly all in cultivation. The premises were so extended during his stay at that station as to include from seventy-five to one hundred acres within the enclosure. The cultivation was intended to embrace over one-half of the land enclosed. There were five buildings at the station when he arrived—one occupied as the residence of the families, one as a church building, school-house, store-house, barn, & a sixth for a workshop.

275 Witness does not know positively what the expense was. In his judgment the expense of establishing and keeping it up could not have been less than fifty thousand dollars.

Witness found connected with the station some forty or fifty head of cattle, which grazed upon grounds claimed by the station, and the prairies in the vicinity.

Q. Describe as fully as you can the boundary of said claim or missionary station.

(Counsel objects to any evidence of boundaries except surveys which have been made, and also to any hearsay evidence of boundaries.)

Ans. While witness was residing there, there was no actual survey with chain & compass. He does not know but that there might have been a survey of boundary previous to his arrival; there was a general understanding among us as to where our boundary should be.

(Counsel for contestants objects to the statements of understanding, &c., as to boundary.)

In 1850 Rev'd William Roberts & witness, together with Dr. Waller & Justin Chenoweth, made a regular survey; thinks it was in the month of June; which survey included 640 acres, embracing the aforesaid improvements. The survey was made with reference to (their)

276 our previous understanding as to boundaries. The survey commenced some two hundred or more yards above the mouth of Mill Creek, on the bank of the Columbia. They designed to run to the cardinel point of the compass. From the beginning they run south to a point near the bluffs, where they stuck a stake witness an oak tree some 18 inch' or two feet in diameter; thence west, across the point of the bluff, to a small oak tree and a mass of rocks; thence north to a point on the rocky ledge; thence an easterly direction to the river, and thence up the river to the place of beginning.

Q. State more fully what you mean by the general understanding as to boundary, referred to by you in your last answer, and how you first obtained your understanding or knowledge as to boundaries.

(Counsel for contestants objects to the above question and to the same being answered, because it is a call for hearsay and understandings, and not for facts derived from his own knowledge.)

Ans. The understanding of witness was obtained from conversing with Mr. Brewer, who had been there previously, and who remained with the witness. No object or boundary was designated or pointed out as having been made or adopted to indicate the extent of the
277 claim, except that the mouth of the creek was talked about as being within the claim, and was our general landing for boats & canoes. They thought when the survey should be made, the west line should include the mill-site, and was so included in the final survey. They had a conversation that the east boundary should run through the prairie some distance east of the enclosure & near its final location.

(The foregoing answer is objected to, so far as the thoughts & conversations of others are concerned.)

Q. Upon what part of the claim, as finally surveyed, was the Indian wigwams connected with the mission, situate?

Ans. Some of them (the Indians) were camped near the mouth of the creek; some of them in the vicinity of the mission buildings, and also between the mouth of the creek and the mission buildings.

(Objected to as irrelevant.)

Q. State if you know of any difficulty subsequently between the Indians and whites east of the Cascade Mountains; if yes, state the time, and effect upon the continuation of missionary labors at said station.

(Objected to.)

278 Ans. About the first of September, 1847, there was a skirmish between the Indians and a company of immigrants, near our premises, in which one white man was killed, and an Indian chief, and also two white men and one Indian wounded. Some ten or eleven weeks afterwards, Dr. Whitman was mu'dered by the Cayuse Indians, as also some ten or dozen others, upon which ensued the Cayuse war. During that war some of our property was destroyed, including some two hundred dollars' worth of his own property,

Q. From your knowledge of the condition of that country and the character of the Indians, state whether there was or not any time between the massacre of Dr. Whitman & June, 1850, when a mission could have been carried on safely at the Dalles Station.

Ans. Witness is of opinion that there was no time between those dates when a Protestant mission could have been carried on with safety.

Q. State what knowledge you have of the interference of public authorities of Oregon or the United States to keep American citizens and American missionaries from or out of the country east of the Cascades & Dalles Station.

(Counsel for contestants objects to the above question being an-

279 swered, as the prohibition of a public officer itself should be produced as the best evidence.)

Ans. Early in the Cayuse war he saw an order over the signature of H. A. G. Lee, superintendent of Indian affairs under the provisional government, and who was also an officer in the army of the provisional government in said war, ordering all missionaries out of the country.

(Objected to, the order itself should be produced as being the best evidence of its contents, & the evidence is irrelevant.)

Q. State if you know where said Lee or the order referred to now is.

Ans. He saw through the public prints that Lee died upon the Isthmus of Panamah.

(Claimant's counsel calls the attention of the surveyor-general to document No. 5, on file upon this subject.)

Cross-examination by Messrs. KELLY & GATES & BRIDGES, attorneys for contestants:

Q. How much property was destroyed which belonged to the mission, and by whom; and when?

Ans. I do not know the exact amount; there was some property destroyed by the troops; does not know that the Indians destroyed any. This was from '47 to '50.

280 Q. State whether the Methodist mission has received compensation for the land taken and property destroyed.

Ans. To my knowledge there has been no compensation received from the United States for property destroyed. Witness understands an act to have been passed awarding compensation for the land of said mission included in said reserve by the military.

(Objected to.)

Q. How many acres was taken by the military?

Ans. He does not know.

Q. How much was the land so taken worth by the acre?

(Objected to as irrelevant.)

Ans. I do not know how much it was worth by the acre, but it was supposed to be worth the amount arranged for by the officer; Maj. Raines recommended the payment of that amount.

Q. At what time did you *incur* to be a missionary at the Dalles?

Ans. I left that station in September, 1847.

Q. When you came away what improvements then remained upon said claim and in what state?

Ans. All the improvements ever made were there and in a good state of preservation.

Q. Do you know of the windows having been removed from any of the buildings; if so, who by?

Ans. I do not know.

281 Q. When you made the survey referred to in 1850, did you start from any marked artificial boundary, or which had the appearance of having been placed there by man before?

Ans. I did not notice any.

Q. Did you see in making the survey, any original marks indicating a former survey?

Ans. I did not discover any.

Q. Were any of the trees specified in the notes of the survey marked as indicating a corner, line or boundary prior to your said survey?

Ans. I did not examine particularly, nor did I see any.

Q. When was that skirmish between the whites and Indians, referred to in a former answer?

Ans. Either in the last days of August or first days of September, 1847.

Q. Was there near the Dalles a Catholic mission, while you was there & when you left?

Ans. There was not.

Q. When for the first time was there a Catholic mission at the Dalles?

Ans. In June, 1850, I found one there on visiting the place.

Q. When was it that the Methodist mission transferred that station to W. Whitman?

Ans. I think the arrangement was completed in September, 1847; it might have been the last days of August.

282 Q. By what authority or by whose direction did you leave there in September, 1847?

Ans. By that of the superintendent of the mission, the Rev'd William Roberts.

Q. To whom did the mission sell?

(Objected to.)

Ans. We never sold the station to anybody, some personal property was sold to Dr. Whitmans.

Q. When did Dr. Whitman go into possession there?

Ans. Immediately upon our leaving.

Q. How long did he remain in possession before he left?

Ans. The persons he had there did not leave until after his murder, and the commencement of the war. Whitman was killed about the last of November.

Q. When Dr. Whitman left there, who did he leave in possession?

Ans. When Dr. Whitman left for Walla Walla he left his nephew, P. Whitman and Mr. Hinman and, I think, Dr. Saffrons at the Dalles station.

Q. Have you any personal knowledge as to whether it would be safe or unsafe to have had any missionary establishment there, from the spring of 1848, and during the years of 1849 & 1850?

Ans. I was not on the ground and do not know whether *whether* it would have been safe or unsafe; I was in Oregon.

Q. State, if you know, who was the regularly appointed Indian agent of the United States in July, 1847.

283 Ans. At the time referred to I think there was no agent here. Dr. White had gone to the States, I think.

Q. You state that certain personal property was sold to Dr. Whitman; what kind of property was it?

Ans. All the personal property belonging to the mission, including farming utensils, &c.

Re-examined in chief:

Q. You have spoken of a transfer to Dr. Whitman; what were the terms and conditions of said transfer?

Ans. The station was transferred to him with the understanding that he should carry on missionary labors at that place as usual.

Q. Did he comply with the conditions? And what reason was it taken back by the Methodist board?

Ans. He commenced operations there and continued until he was mu'dered, when it was found that operations could not be continued, and it was therefore retransferred by his colaborers.

Q. Did you become so familiar with the Indian tongue as to be able to preach to them in their own language?

284 Ans. I obtained a pretty fair knowledge of the Walla Walla language, and was able to preach to them understandingly.

Q. Did you ever preach to the Indians at the Dalles, after the close of the Cayuse war?

Ans. I preached to them once, when I was there in June, 1850.

Q. Why did you preach to them but once that year?

Ans. Because I had no other opportunity. I received a note when there at that time, to have no conversation or communication with them unless I was authorized or was Indian agent, or something to that effect.

Cross examined:

Q. You say above that the mission or station was restransferred; was it retransferred in writing?

Ans. I think there was some communications passed between Mr. Roberts, super't, and the missionaries of the American Board.

Q. When was this retransfer made?

Ans. I think it was not very long after they ceased to carry on operations, but of the year I cannot say; as late probably as 1848.

Q. Was the personal property retransferred?

Ans. We did not get the property; it was used up in the war.

Q. You speak of the conditions of the transfer in one of your answers, were those conditions in writing?

Ans. As before stated I think there were no writings.

285 Qustion by the SURVEYOR-GENERAL:

Q. State, if you know, whether the Methodist society of the Methodist Episcopal Church, on the 14th day of August, 1848, had a mission station at the Dalles, and carried on missionary operations thereat.

Ans. They had no missionary there at that time; and from the action of the government they did consider themselves at liberty to have any.

Q. Have you been in attendance upon the passage of the late appropriation by Congress to indemnify the board for land enclosed in the military reserve?

Ans. Dr. Durbin had charge of the matter as secretary of the board, & sent witness over from New York to Washington some four weeks before the passage of the law to see to the matter. He, Dr. Durban had been at Washington some time before for the purpose of forwarding the appropriation.

By contestant:

Q. At what time did actual hostilities leading to the Cayuse war break out? Did they commence before December, 1847?

Ans. The murder of Whitman, I think, the latter part of November, 1847, was the actual outbreak of hostilities leading to the Cayuse war.

ALVAN F. WALLER.

Subscribed and sworn to before me at Portland Oregon, this 4th day of August, 1860.

W. W. CHAPMAN,
Sur. Gen'l, Oregon.

286 Testimony taken in the presence of the parties or their attorneys, at Portland, Oregon, before the surveyor-general of Oregon.

Rev'd WILLIAM ROBERTS, of lawful age, being duly sworn, deposeth and saith:

Question by Messrs. WILLIAMS & GIBBS, attorneys for the claimants:

Question. State your age, residence, and occupation.

Ans. I am fifty-eight years of age, reside at Salem, Marion County, Oregon, and my occupation is the work of a Christian minister.

Ques. When did you first commence your residence in Oregon, and what was your business?

Ans. In July, 1847, my official business was that of the superintendent of the Oregon mission of the M. E. Church, under the direction of the board of managers of the missionary society of the Methodist Episcopal Church.

Ques. State, if you can, at what time the board of managers of the missionary society of the M. E. Church established missionary stations in Oregon.

Ans. In 1834 or 1835.

287 Ques. State, if you can, whether they had any missionary stations east of the Cascade Mountains in Oregon; if yes, what.

Ans. Early in the history of their missionary labors they established a station at Wascopam, the place now known as the Dalles. They had no other stations in Oregon east of Cascade Mountains.

Ques. State fully all you know in reference to the history and expense of establishing and maintaining said missionary station?

Ans. In July, 1847, there were stationed at that place the Rev'd A. F. Waller and Mr. H. R. Brewer, at an annual expense of nearly two thousand dollars. In August of that year there was a two story dwelling-house, a school-house, which I think was used as a meeting-house, a storehouse with cellar underneath it, a barn with farm and farming utensils. There was also movable property, estimated at over four thousand dollars in value. The original cost of the establishment, I judge, involved an expense of from fifteen to twenty thousand dollars. In this estimate the expense of transporting missionaries around Cape Horn is not included.

(Counsel for contestant objects to any testimony or evidence not based on the personal knowledge of witness.)

288 Ques. What were the boundaries of said claim or missionary station?

(Counsel for contestants objects to any evidence of boundary, except the surveys which have been made; he also objects to any hearsay evidence of a boundary.)

Ans. In June, 1850, the same being as early after the "Cayuse war" as I judged to be safe to occupy the "station," I went to the Dalles to survey it, carrying with me a compass & chain. Finding there Justice Chenoweth, a surveyor, I employed him to survey the claim; Rev'd A. F. Waller, Dr. Waller, and myself carrying the chain. We began at a stake having stones piled around it, a short distance beyond a rocky prominence about two hundred and fifty yards above the mouth of Mission Creek, running thence south one hundred and ten (two poles) chains to a stake—an oak witness tree 24 inches in diameter, bearing south 78° W. 14 chains 20 links—thence west one hundred and sixty chains to a large boulder; two witness trees—first an oak ten inches in diameter, bearing north 58°. 30 east 45 links; second an oak (4) four inches in diameter, bearing south 87° west, distant 30 links; thence north 190 chains to a stake having stones piled about it, thence east sixty chains

to the river to a stake having stones piled about it; thence up the
289 river to the place of beginning.

I am not certain that we either took the course or ascertained the distance upon the last line.

Q. State the number of acres and the property and the prominent points and features of the station included within the survey.

Ans. It included 640 acres, the mission farm and buildings thereunto belonging, a valuable mill-site on Mission Creek, and a landing place near its mouth, upon the Columbia River.

Q. Previous to this time had there been any other survey or marking out of said claim? and if you have any knowledge upon the subject state it, and also how these lines correspond with the original lines.

Ans. I am not aware that there had been any regular survey up to that time, but I followed the boundaries pointed out to me by the missionary, Rev'd A. F. Waller, who had resided there for several years. What I mean by boundaries pointed out is that I surveyed 640 acres of land upon a general area shown to me by Mr. Waller.

(Col. Kelly objects to any declarations made by Mr. Waller which go to establish a former survey or claim boundaries, because the same is only hearsay testimony, and because Mr. Waller may be called to
290 prove the truth of the same, and whether or not such alleged survey was reduced to writing, applying these objections to the preceding answer.)

Q. Was, or was not, the general area spoken of by you in your last answer that included in the original mission claim? State fully all you know in reference to the use and occupation within the survey made by you.

(Counsel for Bigelow objects to the foregoing question because witness does not testify that there was any boundaries of an original mission claim.)

Ans. As to the original mission claim, I have to say the mission station which I found at the Dalles in August, 1847, was included in the general area. This mission station thus included was used and occupied in 1847 about as follows: The mission buildings, which I will now, in explanation, say, included a church, a farm of from thirty to forty acres, a landing place near the mouth of the Mission Creek on the Columbia River, which was used as such, and the general pasture grounds which was necessary for the horses and cattle belonging to the mission and the Indians connected therewith.

Q. Was or was it not your design or effort to so survey the claim as to conform its boundaries to the lines of the station as before held?

291 (The question objected to as being leading, the counsel for the claimant withdraws the last question.)

Q. What was your design in making the survey considered with reference to boundaries?

Ans. My design was to include in the limits of the survey on the last line the landing used as such near the mouth of the creek, and also the fencing of the farm, on the south and west lines, the spring and garden and *pluton* occupied as pasture grounds, including a good mill-site; and on the north line the advantages of the Columbia River and the mouth of Mission Creek.

Ques. State whether or not you accomplished that design.

Ans. I did.

Ques. State, if you know, where the Rev'd Mr. Waller, to whom you have alluded, now is?

Ans. In Buffalo, New York, where he is expected to remain till the

conclusion of the general conference of the M. E. Church, of which he is a member.

Ques. State if any persons were in occupation of any lands included in your said survey at the time it was made.

Ans. There were none that I was aware of.

Ques. Were any objections made by anybody to your survey,
292 and were there any improvements on the land except those claimed by the mission as having been made by them?

Ans. There were no objections, and except those at the military station there were no improvements beyond those of the mission.

Ques. State whether or not you caused any record to be made of your survey; if so, state where the same was made and when.

Ans. I had the survey recorded in the office of the clerk of the probate and county court of Clackamas County, Oregon Territory, which county included the mission station at the Dalles. The second bears date the 16th day of November, 1850.

Ques. State if you at any time attempted to resume missionary operations at the Dalles station, or have any such attempt by the Methodist society since the Cayuse war.

(Question withdrawn.)

Ques. State your knowledge of the transfer of the Dalles station by the Methodist to the American board.

Ans. In August, 1847, I transferred the said station into the hands of Dr. M. Whitman at the assent of the A. B. C. F. M. The mission station was placed in his hands on the conditions and with the understanding that it should be occupied by them for the use and benefit of the Indians residing in that place and vicinity. For the movable
293 property they were to pay such an amount as might mutually be agreed upon. For the station itself they were to give no compensation, the understanding being all the while that the mission was to be maintained by them for the use & benefit of the Indians in a religious point of view, which included the education of the children, the instruction of the Indian parents in all matters pertaining to their religious interests & temporal wel' being. The reasons for the transfer without compensation were briefly these: The Methodist mission had but one station east of the Cascades and more work in the Willamette than they could well attend to. The American board had three stations in the upper country, and it was quite desirable for them to have the Dalles also, as it was the key to that entire region, and as an act of Christian regard and confidence the transfer was thus made.

Ques. State if ever the said station was transferred to the Methodist mission; if so, when and by whom?

(Col. Kelly objects to the question beinga nswered because, being in writing, parol evidence cannot be received in place of a written instrument.)

294 Ans. A proposition was made to me by E. Walker, H. H. Spaulding, and C. Eels, of which the instrument of writing here filed marked Exhibit A is a true and correct copy. To this proposition I returned an answer in writing, after which I took charge of the station while I remained superintendent of the board. This took place some time in February, 1849.

Ques. State what knowledge you had, if any, of the destruction of the mission buildings.

Ans. The buildings were nearly all destroyed at the time I arrived there, in June, 1850. The work of demolition was then going on by order of the officer in charge of the military station.

State if there was any time, so far as your knowledge extends, between the massacre of Dr. Whitman and June, 1850, when a mission could have been carried on at the Dalles station.

Ans. There never was a period when it would have been safe for missionaries to reside there and labor there during that time.

Ques. State what knowledge you have of the interference of the public authority of Oregon, or of the United States, to keep missionaries from or out of the country east of the Cascades, & from the Dalles station.

(Col. Kelly objects to any testimony of witness on this subject, because prohibition by a public officer is the best evidence.)

295 Ans. I was prevented in part from actually sending a man to reside there by seeing an order upon that subject signed by H. A. G. Lee, acting as Superintendent of Indian Affairs, published in the public journals in the year 1848.

Q. State if the Methodist Missionary Society ever abandoned the Dalles station with a view to have missionary operations cease there.

(Objected to as leading, because witness should state the facts to show whether it was abandoned or not.)

Ans. In August, 1847, I found the station fully occupied, and I continued its operation until the transfer to the American Board near the close of that month.

Ques. State when you ceased to be superintendent of the mission.

Ans. I think I ceased to act as superintendent in March, 1853.

Ques. State whether as such superintendent you maintained the right of the said society to said station while you acted here in Oregon; if not, state in what respects you did.

(Question objected to as leading.)

Ans. I took all measures I judged necessary under legal advisements to maintain said right during the time I had possession of the station.

Q. State if you ever had any orders or directions from the military of the Dalles in reference to the resumption of missionary labors there.

296 Ans. I received a letter from the military at the Dalles upon that subject, at least the letter purported to come from some military authority, but do not remember from whom. I think from Maj. Hathaway.

Q. Please state the contents of the letter and its date.

(Objected to, and objections sustained by the surveyor-general.)

Cross-examined by Col. KELLY, attorney for W. D. Bigelow, and N. H. GATES, esq., for the city of Dalles.

Question. State whether you are conversant with the missionary operations of the Missionary Society of the Methodist Episcopal Church in Oregon.

Ans. I am somewhat.

Question. State whether it was an incorporated society, and where was it located?

Ans. It is an incorporated society. The principal seat of its operations was in the city of New York.

Ques. State whether it has a system of by-laws and regulations for its government.

Ans. It has a regular constitution, and I think some regulations by which it is governed.

Q. Does it keep minnets of all its transactions in respect to the location of missionary stations?

297 Ans. It does keep min*nets* in regard to the establishment of all new missions, and the general events of their history and management; but the particular location of any station within the bounds of a mission is, I think, left to the discretion of the superintendent thereof, subject, however, to the order of the board from time to time. The history of such particular stations is, I think, kept with care and accuracy by the board.

Q. State whether there is among the records of proceedings a detailed history of the several mission stations of that society in Oregon up to the year 1848, on the 14th of August.

(Question objected to, because it is not competent to prove contents of record by parol.)

Ans. The general events in the history of the Oregon mission are given, I think, in the min*nets* above alluded to.

Q. Who appointed the several ministers or missionaries for the society in Oregon?

Ans. They were selected in the States by the bishop having charge, aided by the missionary board, and sent here, where they received their appointments to their several stations from the superintendent of the mission.

Q. Who established a mission station at the Dalles, and when was it done?

298 Ans. The station was established, I think, by Rev'd Jason Lee some time in 1836 or 1837.

Q. What was the value of the improvements at the Dalles mission in 1847, including all the buildings, the farming and cultivation of the soil, and inclusive of all personal property?

Ans. The actual value of said improvements, inasmuch as there might have been no market or sale for them, would bear no proportion whatever to what they had cost the mission, and might not be over from eight to ten thousand dollars.

Q. Could not all the improvements specified in the last question have been made in 1847 for three thousand dollars?

Ans. I think not.

Q. What could they have been erected for in 1847?

Ans. It is very difficult for me to make an estimate of such cost; it was at once difficult and dangerous to live and labor there then. Indian labor I found to be very costly and impracticable. Emigrant labor was unavailing, because there were none residing there, and hostilities involving loss of life took place while I was there. Everything that could not be made upon the spot had to be transported at great expense up the river, so that I think the improvements would have cost upwards of five thousand dollars.

299 Q. In your survey, made in June, 1850, did you start from any marked artificial boundary, or which had the appearance of having been placed there by man?

Ans. I do not remember finding at the corners of the claim, as we surveyed it, original marks of a former survey.

Q. Did you find any stakes which had been planted along any part of the line?

Ans. I do not remember that I did.

Q. Were any of the trees specified in the notes of the survey marked before you surveyed the claim?

Ans. I do not remember.

Q. Did you not plant stakes, mark corners and trees, as if no survey had ever before been made?

Ans. We planted stakes, marked corners and trees, sufficient as we thought to designate the boundaries. But whether or not we adopted any corners or marks of any former survey I cannot remember.

Q. Did Justin Chenoweth, in running the lines, pretend to look for any marked monuments of any former survey?

(Objected to, because, as they say, Mr. Chenoweth should be brought to testify.)

Ans. I do not know whether he did or not.

Q. Was not your object, in making the survey, to include an area of 640 acres, embracing the most valuable points and places in the
300 vicinity of the mission station, and not to follow any supposed former boundaries?

(Objected to as leading.)

Ans. My object was to include the points and places in the vicinity of the mission station which had been in use in the mission for the benefit of the Indians, including 640 acres, using the knowledge of the resident missionary, who had been on the claim for years. I did intend most earnestly to conform the lines to what I believed to be the original purpose in settling the claim.

Q. Who was the agent of the Oregon Mission before you were appointed?

Ans. The Rev. George Gary was superintendent; he continued superintendent until on or about the 10th day of July, 1847, when he left the country and I entered upon the duties of that office.

Q. Was it his intention to abandon the Dalles mission station ——

(Objected to by the Rev'd Mr. Pearne)—while acting as superintendent?

Ans. I can only say he conversed with me especially about its transfer to the American Board, and left the station in my charge, keeping two men stationed there up to the time of his leaving the country.

301 Q. Did he not say to you and Mr. Walker that it was too much expense to the society to occupy that station, and that it should be abandoned, even if Dr. Whitman did not purchase it?

(Objected to.)

Ans. No; he did not.

Q. Did he write any letters to the society in *in* New York to that effect?

(Objected to by claimant because, as they say, the letters are the best evidence.)

Ans. None that I know of.

Q. How much did Dr. Whitman agree to pay for the station?

Ans. He did not agree to pay anything for the station, as I have before answered, but for the movable property such a sum as might be agreed upon, which, I think, was subsequently fixed at a fraction over six hundred dollars. In a former answer in which I spoke of the movables as worth over four thousand dollars I should have said the value of the property destroyed.

Ques. What property was this 600 & odd dollars given for?

Ans. Quite a number of items, including a large canoe, farming utensils, fanning mill, some wheat, &c., &c.

Q. What was the date of that draft, and by whom drawn?

Ans. The draft was drawn, I think, by Dr. Marcus Whitman
302 on the American Board, and was dated some time in or about September, 1847.

Ques. State when, if ever, that draft was presented to the drawees for payment.

Ans. I think it was never presented for payment.

Q. How long was that draft kept in your possession, and what become of it?

Ans. On account of the death of Dr. Whitman and destruction of the mission station it was held in my hands for one or two years, and was then given up to the American Board.

Q. To whom did you deliver it?

Ans. I do not now remember.

Q. When were the persons in your employ removed from the mission?

Ans. Early in September, 1847.

Q. When did missionary services cease by Mr. Waller?

Ans. About the time of his removal.

Q. Do you know of your personal knowledge whether any missionary services were afterwards performed there?

Ans. I do.

Q. When and for what length of time were they performed at that station, and by what clergyman?

Ans. By Mr. Waller, in 1850, during our visit to that place.

Q. To what Indians did Mr. Waller preach in 1850; in what house or church, and for what length of time?

303 Ans. To the Wascopam Indians, at or near their lodges during our visit above alluded to; we were there not over four or five days.

Q. Was any missionary left there to teach the Indians and to preach to them after your visit had ended?

Ans. I think not.

Q. Between September, 1847, and June, 1850, were there any missionary services performed to your knowledge?

Ans. I witnessed none.

Q. Who were the acting missionaries of the American Board in 1847, east of the Cascade Mountains?

Ans. Dr. Marcus Whitman, H. H. Spaulding, E. Walker, & C. Eels.

Q. Were there any others?

Ans. Dr. Whitman subsequently employed A. Hinman and Perrin Whitman, but whether they were in actual service at that time I do not know.

Q. Was not Mr. Hinman employed only as a farmer, and did he at any time instruct or preach to the Indians?

Ans. I do not know what his precise duties were.

Q. Do you know whether Perrin Whitman was a missionary employed by the American Board of Missions, or recognized as such by the society in Boston?

Ans. I do not.

Q. Was the station at the Dalles actually occupied as a mis-
304 sion station by any society on the 14th day of August, 1848?

(Objected to.)

Ans. The missionary stationed there by Dr. Whitman in 1847 having been driven away by Indian hostilities, the disturbed state of the country and publication of H. A. G. Lee, before alluded to, rendering it in our judgment unsafe, no missionaries were actually living and laboring there at that time.

Q. Do you know from personal knowledge anything about whether it was safe or unsafe to have missionary labors performed there on the 14th August, 1848, or not?

Ans. In September, 1847, I saw two men killed and several others

wounded at that station. In a few days after, I left the place and saw it no more until 1850. If by personal knowledge is meant that desired by being on the spot and witnessing and examining the sources of danger, I have no such personal knowledge.

Q. How many miles were you from the Dalles station during the spring and summer of 1848, counting from your residence?

Ans. About one hundred and fifty miles.

Q. State whether the Indians mentioned by you as having been killed was not killed in a row with some immigrants about a horse?

Ans. The persons, both Indians and whites, were killed in a
305 quarrel between a company of immigrants who were passing, and the resident Indians, under such circumstances as greatly to endanger the lives of the missionaries.

Q. State whether this difficulty was not some time after the transfer by the Methodist to the American Board?

Ans. The arrangement for transfer had just been made, but our men had not yet been withdrawn.

Q. State whether or not Dr. Saffrans was in possession of the mission station for Dr. Whitman at the time of the difficulty refered to?

Ans. I do not know whether he was there or not; I think he was not.

Q. State at what time the difficulty took place.

Ans. It was in the month of August, 1847, on Monday the day of the month.

Q. Was it through fear of the Indians the transfer was made?

Ans. No; it was not.

Ques. State whether the Indians at the Dalles did not preserve their friendship for the whites throughout all Cayuse difficulties, and whether, with the Dalles Indians, there ever was any other difficulty than the one above mentioned.

Ans. In the main they did, though the above-mentioned quarrel, with its attending circumstances, indicated great danger. I am not aware of any other instance of particular peril from that band of Indians.

306 Ques. Was there not a missionary establishment of the Catholic Church in quiet and peaceable operation at the Dalles in the spring of 1848, and ever since?

Ans. I do not know.

Ques. When you was up there in 1850, did you not find Catholic missionaries established within one or two miles of your abandoned station?

Ans. The station was not abandoned. I did not find such Catholic missionaries, but for what I know they may have been there.

Ques. Did you not find buildings *directed* within one or two miles of your former station, and which were said to belong to the Catholic missionaries?

Ans. I have no recollection of having seen any such buildings; they may have been there.

Ques. Have you any personal knowledge of any Catholic missions at the Dalles from the spring of 1848 and during the years 1849, 1850?

Ans. No; I have not.

Ques. Have you any personal knowledge as to whether it would be safe or unsafe to have had any missionary establishment there from the spring of 1848 and during the years of 1849, 1850?

Ans. Excepting the visit I paid there in June, 1850, I was not on the ground during that interval of time, but from various considerations judged it unsafe and impracticable to employ missionaries at
307 that station to the intent of a residence there.

Ques. Had you any information from any person who was in

that vicinity upon which you found your judgment that it was not safe to establish a residence before '850? If so, state from whom you received that information.

Ans. In a communication published by H. A. G. Lee, referred to in a former answer, and dated July 13th, 15th, 1848, missionaries were cautioned not to expose themselves to the lamented fate of Dr. Whitman by laboring east of the Cascade Mountains, and I do not remember any definite points than the general information current in the country as to the unsettled condition of affairs at that station.

Ques. Were you acquainted with H. A. G. Lee? If so, where did he reside?

Ans. I believe I was, but I do not know his place of residence.

Ques. From whom did he get his authority for making that publication?

Ans. I understood him to be a properly accredited officer of the government.

Ques. Was or not Dr. Elijah White the regular appointed Indian agent of the United States Government in July, 1847?

Ans. I did not understand him so to be.

Ques. Had he not been acting in that capacity at that time, and for some years before?

308 Ans. I had no personal knowledge that he had.

Ques. What was your understanding?

Ans. I did understand that Dr. White once claimed to be Indian agent, but that if he ever was such, his agency had ceased.

Ques. Did you understand that H. A. G. Lee was acting as superintendent, appointed by the President of the United States?

Ans. I did understand him to have been appointed superintendent by the proper authorities, but whether by the President or not I do not remember to have enquired.

Ques. Did he pretend to have any authority from the President to act as superintendent?

Ans. My information as to his authority, or claims to authority, is derrived from the fact of his acting as such, and not from any examination of his credentials.

Ques. Were not the Cayuse Indians completely subdued by the volunteer forces, and all Indian hostilities ended east of the Cascade Mountains, as early as the month of March, 1848, and the greater portion of the troops returned to the Willamette Valley in April of that year?

Ans. I do not know.

Ques. Do you not know that the volunteers returned from the Cayuse war as early as March and April, 1848, to the Willamette Valley?

Ans. I cannot remember the date of their return.

309 Ques. You state in your direct examination that there never was a period between the massacre of Dr. Whitman and June, 1850, where it would have been safe for missionaries to have resided at the Dalles and labored there. How do you know this?

Ans. My information was derived from the communication of H. A. G. Lee; the general report of the unsettled state of the Indians in the upper country, some of whom, from time to time, visited the Willamette.

Ques. Were not the Indians east of the mountains, in the spring of 1848 and the year 1849, entreating missionaries to come and labor among them?

Ans. I think there were individuals of them who did.

Ques. Did not the chiefs of the several tribes so entreat them?

Ans. I think they did in some instances; but the question of chieftaincy among them amounted to but little.

Ques. State if there were any chief or prominent individual who desired the missionaries to remain away.

Ans. Not that I know of.

Ques. You say in your direct examination that you was prevented, in part, from sending a man to reside at the Dalles station, by seeing the order of H. A. G. Lee; do you wish to be understood as saying
310 that you would have sent a missionary there after you had transferred the station to the American board, had it not been for the order of Lee?

Ans. I wish to be understood as saying that after the retransfer of the station into my hands, I was in part prevented, as referred to.

Ques. Did you, as superintendent of the Oregon mission, in your communications to the society in New York, claim the Dalles station as one of your missionary stations between the time you transferred to Dr. Whitman and the time that Messrs. Walker, Spaulding, and Eels pretended to transfer it to you in 1849?

Ans. I think not.

Ques. Did you claim that station, or were you in the actual occupancy of it as a Methodist missionary station between those dates?

Ans. Whatever may be the leagal meaning of actual occupancy, in common acceptations, I did not claim it, & did not occupy it.

Ques. Were there many Indians at the Dalles when you visited there in June, 1850?

Ans. I think not many resident Indians.

Ques. Was not your object in going there in June, 1850, more to make gain for your society by reclaiming a point that promised to be of great prospect of value, than to establish a mission station for the benefit of the Indians?

Ans. My object was to guard most sacredly the just claims of
311 the society, and to re-establish, if possible, the mission among the Indians.

Ques. Would gone you have up there during that time if the act of the 14th of August, 1848, had not conferred certain rights upon missionary societies?

Ans. Such rights were conferred, and it was my duty to guard them. What I would have done under other circumstances I cannot say.

Ques. Was it your intention to re-establish a mission at the Dalles, before you heard of the passage of that act of Congress?

Ans. I cannot remember. The retransfer of the property took place nearly at the time the news of the passage of the act was received.

Ques. Had Messrs. Walker, Spaulding & Eels had authority to make that retransfer?

Ans. I suppose they had.

Ques. Did they pretend to have any power, or show you any from the society in Boston, authorizing them to act in the premises?

Ans. I do not remember.

Ques. Have you not since seen the power of attorney authorizing these gentlemen to act?

Ans. I do not remember.

Ques. Have you not seen the power of attorney in relation to the other stations of the American board authorizing those gentlemen to sell?

312 Ans. I do not remember.

Ques. How many mission stations were actually occupied as

such in Oregon on the 14th of August, 1848, and where they were located?

Ans. The only other stations besides that of the Dalles, of which I have already spoken, is the one at Salem, Marion County.

Ques. Have you obtained a recognition of your right to the station at Salem under the act of 14th August, 1848?

Ans. I have no information upon that subject.

Ques. Did not the Methodist Missionary Society prove their right before the surveyor-general of Oregon to a tract of land at Salem under that act, and does not that society claim that tract of land?

Ans. I understand the society does lay claim to a tract of land at Salem, and I was called upon to give testimony in regard to it before the surveyor-general of Oregon.

Ques. Is the society not now in possession of that tract of land at Salem under said act of Congress?

Ans. I think it is.

Ques. Do you not reside on or near that tract of land?

Ans. I do reside upon it.

Ques. When did farming operations entirely cease at the Dalles station on the part of the Methodist Missionary Society?

313 Ans. On the removal of M. B. Brewer about the first of September, 1847.

Ques. How long before the transfer to Dr. Whitman in August, 1847, was it that negotiations for a transfer commenced?

Ans. They were commenced by my predecessor, Rev. George Gary, or at least they had been the subject of conversation some months before, but no definite arrangement was made until the middle of August, 1847, when I actually concluded the transfer with Dr. Whitman in person.

Ques. State whether you or your predecessor, Mr. Gary, had received any directions or instructions before that time to withdraw your missionary operations from the east of the Cascade Mountains?

Ans. Neither he nor I received any such instructions that I am aware of, but I did understand it to be optional with me to make the transfer of the station if I judged it best.

Ques. After your farming operations ceased, in August, 1847, were they ever afterwards resumed at that station?

Ans. Not by our society.

Ques. You said in the forepart of your examination that there was no preaching or teaching of the Indians at that station, after the first of September, 1847, by your society until your visit in June 1850.

314 State now whether the services performed in June, 1850, were missionary services or not.

Ans. They were.

Ques. About how many times did Mr. Waller then preach to the Indians?

Ans. I think he held two or three religious services among them.

Q. Did Mr. Waller, in 1850, go to the Dalles for the purpose of preaching to the Indians, or did he go for the purpose of making out 640 acres of land?

Ans. If I remember correctly, the Dalles was a part of Mr. Waller's work that year, as stated in our min*utes*. He went there for the purpose of pointing out to me the boundaries of the mission claim & also ministering to the religious wants of the Wascopam Indians.

Q. Where was Mr. Waller stationed at that time?

Ans. I do not remember distinctly.

Re-examined in chief:

Ques. State the reasons, as you understood them at the time, for the retransfer of the Dalles station?

Ans. The missionaries of the American Board found themselves unable to fulfil the conditions of the original transfer, on account of Indian hostilities, and the destruction of their other missions, and believ-
315 ing the Dalles station to include very valuable property which of right belonged to us, in the most Christianlike manner returned it to its original owners.

Ques. When you returned to the Dalles, in 1850, was it practicable to resume regular missionary labor there; if not, why not?

Ans. It was not; because in addition to our convictions of danger, which I have before mentioned, and which were confirmed by the events of the late Indian war, our buildings and farms were completely destroyed. The place was in utter confusion on account of desertion of United States troops. The officer in charge kindly informed me that he could furnish me no protection whatever; his men were deserting; they would certainly steal my horses if I did not guard them by night as well as by day. So it was with difficulty I remained there one week.

Cross-examined:

Ques. About what time did your convictions of danger cease?

Ans. I guess about the time the war was over.

Ques. About what time did the war cease?

Ans. Some time in 1856.

Ques. Was there not a pretty large city before 1856, sufficient to dispel all apprehensions of danger at that place?

Ans. I was not there in that period.

316 Ques. From what Indians was it that the commanding officer at the Dalles said he could not protect you?

Ans. My answer had reference to protection from danger of loss of property by the United States troops.

Ques. Was the retransfer spoken of by you of the Dalles mission station by deed from Messrs. Walker, Spaulding & Eels or not?

Ans. It was not.

Question by the SURVEYOR-GENERAL:

Are there more than one class of missions recognized in the government of the board of managers of the Missionary Society of the Methodist Episcopal Church? If so, state how many, their nature, and object, respectively, and to which, if either, did the Dalles station belong; and if there was any change from the government of one to that of any other, when did it take place?

Ans. There are two classes of missions in the government above refered to, "Foreign and Domestic." The nature of these is indicated by their names. The one relating to mission stations at a distance; the other to destitute portions of the work at home. In 1847 the missionaries here were amenable to their annual conferences at home. At
317 this time this was a foreign mission. In May, 1848, it was organized into a mission conference, which relation it sustained until May, 1856, when it ceased to be a mission altogether. Up to this time it was a foreign mission. There are now portions of this country which are destitute and are regarded as domestic missions. Since May, 1848, the ministers have been amenable to the conference here. Any mission property here belongs not to the Oregon conference but to the missionary board at New York.

By the SUR. GEN.:

Was there any period when, by the economy of the missionary society, the Indian tribes in Oregon ceased to be in the charge of the mission; if so, when?

Ans. There has been no period since the establishment of the first mission station here when the Indian tribes have not been regarded as the especial charge of the missionary society. And it has instructed its representatives here to do everything in their power for their benefit, as the record of those instructions will most abundantly show.

SUR. GEN'L. Does instruction in the arts of civilized life constitute a leading object in the instruction at Indian stations? If so, state if at any time that object was abandoned at the Dalles station.

Ans. The great object of instruction at the Indian stations is
318 religious instruction, the salvation of their souls. To secure this other things are frequently necessary, such as teaching them the common branches of learning, especially the children, and sometimes husbandry and the arts of civilized life; but these last items are always subordinate to the leading object. At the Dalles we dismissed the former when we transferred the station, and did not subsequently resume that department.

Cross-examined by the contestants:

Ques. State whether Mr. Gary was sent out from the society in New York to close up the secular business of the Oregon missions and to dispose of the mission property in that Territory.

Ans. Mr. Gary was sent out to investigate fully the affairs of the mission, and to dispose of all the secular concerns, so far as the religious state of the mission required or would allow. By secular concerns, I mean the cattle, horses, mill, farm, &c. These, owing to the extreme newness of the country, had become an extensive charge, and as it became settled by immigrants, were no longer necessary to the continuence of the mission. Disposing of all the rest, Mr. Gary reserved the station at Salem and at the Dalles.

319 Ques. State what proportion of the personal property at the Dalles did Mr. Gary dispose of, and to whom, and when.

Ans. I think in the spring of 1847, he sold a large proportion of the cattle which were at the Dalles to Mr. Waller, Mr. Brewer, and Dr. Locey.

Ques. About what was the value of the property he disposed of then?

A. I think Dr. Locey's bill was nearly $300; of the amount sold to others, I have no recollection.

Ques. Was it not the intention at that time to close up all farming operations and stock raising at the Dalles?

Ans. In view of the probable transfer of the mission, the secular department was materially changed.

Ques. Was not the personal property disposed of by Mr. Gary before negotiations entered into by him with Dr. Whitman for the transfer of the mission station?

Ans. If by negotiations you mean preliminary arrangements, I answer to the best of my knowledge, no.

Ques. Who was the last person who performed religious services to the Indians and taught before the missionaries withdrew, in 1847, from the Dalles station?

320 Ans. The Rev'd A. F. Waller, who left shortly after and on the same week with myself.

By SUR. GEN.:

Ques. At what time were you first informed of the inability of the missionaries of the American board to perform the conditions of their contract to keep a mission at the Dalles?

Ans. I think very nearly the time when the negotiations for its retransfer were entered into.

WILLIAM ROBERTS.

Subscribed and sworn to before me this 14th day of May, A. D. 1860.

W. W. CHAPMAN,
Sur. Gen., Oregon.

(Endorsed:) 7. Rev'd W. Roberts.

321 EXHIBIT A.

To Rev. WILLIAM ROBERTS,
Superintendent of the Methodist Episcopal Mission in Oregon, North America:

We, the undersigned, desire respectfully to submit the following proposition, viz: To offer for your acceptance the mission station at Wascopan, near the Grand Dalles of the Columbia River. We purpose that it be retransferred to the Oregon mission of the Methodist Episcopal Church in the same manner in which it was received by the Oregon Mission of the American Board of Commissioners for Foreign Missions. Any articles of property included in the list which was received by our mission, and which has been removed or disposed of we will pay for the property of the station, whether movable or otherwise, which has been destroyed by the Oregon troops, Indians, or by other persons, we would prefer not to be held responsible for. If it should be necessary to make use of the name of the mission, or board, in business transactions with the government for the recovery of property destroyed, we perceive no reason why it may not be done.

Oregon City, February, 1849.

(Signed) ELKONA WALKER,
HENRY H. SPAULDING,
CUSING EELES.

(Endorsed:) Exhibit A to Rev. W. Roberts' deposition, filed 12 May, 1860. W. W. Chapman, Sur. General.

321½ And afterwards, to wit, on the 13th day of February, 1880, there was duly filed in said court a stipulation in words and figures as follows, to wit:

322 *Stipulation.*

In the circuit court of the United States for the district of Oregon.

It is hereby agreed that the bond for costs on the appeal to the Supreme Court of the United States in the following cases, to wit, Dalles City v. The Missionary Society of the Methodist Episcopal Church, deft., and Kelly, Waite and Humerson against the same, and Kelly and Waite v. the same, shall be $600, with such sureties as the statutes provide.

Portland, Oregon, Feb., 7, 1880.

JAMES K. KELLY,
Att'y for Defendants.
J. C. CARTWRIGHT,
Attorney for Appellants, the Missionary Society of the M. E. Church.

(Endorsed:) Filed February 13, 1880. R. H. Lamson, clerk.

322½ And afterwards, to wit, on the 13th day of February, 1880, there was duly filed in said court a bond in words and figures as follows, to wit:

323 *Bond.*

Know all men by these presents that we, E. J. Northrup and D. P. Thompson, are held and firmly bound unto Dalles City in the full and just sum of six hundred dollars ($600), to be paid to the said Dalles City, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 13th day of February, A. D. 1880.

Whereas, lately, at a term of the circuit court of the United States for the district of Oregon, held at Portland, in the State of Oregon, in a suit depending in said court between Dalles City, complainant, and the Missionary Society of the Methodist Episcopal Church, defendant, a final decree was rendered against the said defendant, and said defendant is desirous of removing said cause by appeal to the Supreme Court of the United States to reverse the said final decree of said circuit court in the aforesaid suit; and a citation directed to said com-
324 plainant citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said appellant shall prosecute its said appeal to effect and answer all costs if it fails to make its plea good then the above obligation to be void; else to remain in full force and virtue.

E. J. NORTHRUP. [SEAL.]
D. P. THOMPSON. [SEAL.]

Sealed and delivered in presence of—

DISTRICT OF OREGON, *ss:*

E. J. Northrup and D. P. Thompson, each being duly sworn, for myself say I am a resident of and householder in the State of Oregon; that I am worth the sum of twelve hundred dollars over and above all debts and liabilities and property exempt from execution.

E. J. NORTHRUP.
D. P. THOMPSON.

Subscribed and sworn to before me this February 13, 1880.

R. H. LAMSON,
Clerk U. S. Circuit Court, Oregon.

Approved.

DEADY, *J.*

(Endorsed:) Filed February 13, 1880. R. H. Lamson, clerk.

324½ And afterwards, to wit, on the 16th day of February, 1880, there was issued out of said court a citation in words and figures as follows, to wit:

325 *Citation.*

The United States of America to Dalles City, greeting:

Whereas the Missionary Society of the Methodist Episcopal Church

has lately appealed from a final decree lately rendered in the circuit court of the United States for the district of Oregon, in your favor and against the said Missionary Society of the Methodist Episcopal Church, to a Supreme Court of the United States to be holden at Washington on the second Monday of October next, and has given the security required by law:

Now, therefore, you are hereby cited and admonished to be and appear at said Supreme Court of the United States on the said second Monday in October next, to show cause, if any there be, why said final decree rendered in your favor and against the said Missionary Society of the Methodist Episcopal Church should not be corrected, and why speedy justice should not be done to the parties in that behalf.

MATTHEW P. DEADY,
U. S. District Judge, Oregon.

This is to certify that the within citation was served on me the 16 day of February, 1880, in Portland, Oregon.

JAMES K. KELLY,
One of the Att'ys for Dalles City.

Filed Feb. 16, 1880.

R. H. LAMSON, *Clerk.*

326 In the circuit court of the United States for the district of Oregon.

DISTRICT OF OREGON, *ss:*

I, R. H. Lamson, clerk of the circuit court of the United States for the district of Oregon, do hereby certify that the foregoing transcript of the papers, pleadings, and orders of court, including the testimony and the opinion of the court, in the cause of Dalles City, complainant, vs. The Missionary Society of the Methodist Episcopal Church, defendant, has been by me compared with the originals thereof, constituting the record in said cause, and that it is a correct transcript of the whole thereof as the same appear of record and on file in my office and in my custody. And I further certify that the copy of stipulation and bond on appeal thereto attached is a true copy of the original stipulation and bond on file in my office.

And I further certify that the citation thereto attached is the original citation issued in said cause.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Portland, this Feb. 19, 1880.

[SEAL.]

R. H. LAMSON,
Clerk.

327 In the circuit court of the United States for the district of Oregon.

DALLES CITY, COMPLAINANT,
vs.
THE MISSIONARY SOCIETY OF THE METHODIST Episcopal Church, defendant.

It is hereby stipulated and agreed between the parties to this suit, by their solicitors, that the testimony contained in the transcript in this cause may be used and considered in the case of James K. Kelly, A. E. Wait, and Phœbe M. Humoron vs. The Missionary Society of the M. E. Church, now appealed to the Supreme Court of the United States, in

the hearing of said appeal and that said causes may be heard and considered together.

It is further stipulated and agreed that this stipulation shall
328 also apply to the case of James K. Kelly and A. E. Wait against the Missionary Society of the M. E. Church, if it shall be decided that an appeal can lawfully be taken to the U. S. Supreme Court, which the solicitor of complainants in said last-entitled cause deny, on the ground that the amount in controversy in said last-entitled case does not exceed two thousand dollars ($2,000).

Witness our hands this 21 day of February, 1880.

JAMES K. KELLY,
One of the Att'ys for Complainants.
J. C. CARTWRIGHT,
Att'y for Defendants.

(Indorsement on cover:) No. 770. The Missionary Society of the Methodist Episcopal Church, appellant, vs. Dalles City. Oregon C. C. U. S. Filed 6th April, 1880.

REC. 770—9